



2010
Report of the
Charter Review Commission

May 2010
Montgomery County, Maryland



CHARTER REVIEW COMMISSION

April 30, 2010

Montgomery County Council
Stella Werner Council Office Building
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

Dear Councilmembers:

As Chair of the Charter Review Commission, it's my pleasure to submit the 2010 Report for the Council's consideration. The Charter provides an effective framework for governance that continues to support the ever-changing needs of the County and its residents.

Since its last report was issued in May 2008, the Commission studied 5 issues related to the current charter and at this time is recommending no changes to the existing charter.

On November 30, 2009 then-Council President Phil Andrews sent the Commission a memorandum stating that the Council voted unanimously to ask the Charter Review Commission to study whether to amend the Charter to allow a special hiring authority to be established in the County merit system that would permit an alternative approach for the recruitment, selection, and hiring of people with disabilities into merit system positions. Any recommendation regarding this proposed change to the Charter will be made after this report has been submitted.

The Commission appreciates the comments it received from government officials and residents because this information helped the Commission identify issues and guided its deliberations on matters that affect County residents. Without the participation of all of these groups, the Commission would not have functioned as effectively.

On behalf of the Charter Review Commission, thank you for the opportunity to serve the County as members of this Commission.

Respectfully submitted,

Nancy Soreng, Chair
Charter Review Commission

Montgomery County Council

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CHARTER REVIEW COMMISSION

Members

Nancy Soreng, Chair

*Alice Gresham Bullock, Vice-Chair**

Michael Cogan

Karen Czapanskiy

Wilbur Friedman

Mollie Habermeier

Robert Shoenberg

*Moshe Starkman***

Judith Vandegriff

Anne Marie Vassallo

Charles Wolff

**Resigned in January 2010*

***Appointed in March 2009*



2010 Report of the Charter Review Commission

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I. INTRODUCTION

The Constitution of Maryland, Article XI-A, enables counties to adopt charters to establish local governments. County charters are, in effect, constitutions for county governments because they establish the duties and responsibilities for the different branches of government.

The voters of Montgomery County adopted a charter form of government in 1948. In subsequent general elections, voters adopted several amendments to the original Charter. The current Charter was adopted in 1968, with subsequent amendments.

Charter §509, adopted by amendment in 1976, requires the quadrennial appointment of an eleven-member, bipartisan Commission to study the Charter and make recommendations on potential Charter amendments. Commission members serve four-year terms, and no more than six of the eleven members may be from the same political party.

The Commission researches and evaluates Charter issues raised by the Executive, Councilmembers, other government officials, and the public. A report on the Commission's activities must be submitted to the Council no later than May 1 of every even-numbered year. The biennial report outlines the issues that the Commission considered and recommends Charter amendments to include on the general election ballot. By mid-August, the Council determines which Charter questions in addition to those raised by petition, will be placed on the ballot.

Since its last report was issued in May 2008, the Commission studied 5 issues related to the current charter and at this time is recommending no changes to the existing charter. During this timeframe, the Commission met with two sitting Councilmembers and relevant Executive and Maryland-National Capital Park and Planning Commission staff. The Commission held a public forum on October 6, 2008 and requested comments from various civic, business, ethnic, and nonprofit groups and individuals. Information gathered from these discussions was

evaluated to determine if Charter amendments were warranted to improve governmental performance and accountability.

On November 30, 2009 then-Council President Phil Andrews sent the Commission a memorandum stating that the Council voted unanimously to ask the Charter Review Commission to study whether to amend the Charter to allow a special hiring authority to be established in the County merit system that would permit an alternative approach for the recruitment, selection, and hiring of people with disabilities into merit system positions. The memorandum requested comment by July 1, 2010. The Commission has not completed its deliberations on the topic. Any recommendations regarding this proposed change to the Charter will be made after this report has been submitted.

II. SUMMARY OF CHARTER REVIEW COMMISSION'S RECOMMENDATIONS

A. RECOMMENDATIONS FOR CHARTER AMENDMENTS

The Commission is not recommending any Charter changes at this time.

B. RECOMMENDATIONS REQUIRING NO CHARTER CHANGES

1. APPOINTMENT OF THE INSPECTOR GENERAL

County Executive Leggett suggested that the Charter be amended to allow for an Executive-nominated, Council-confirmed Inspector General. The Commission recommends 7-0-2 (1 Commissioner absent and 1 position vacant) against amending the Charter to make this change. A majority of the Commission felt that the current structure and appointment process for the Inspector General provides the Office with a great deal of independence. (Refer to the information beginning on page 4.)

2. SPECIAL TAXING DISTRICTS

Section 305, Approval of the Budget; Tax Levies

Council staff and some Councilmembers raised the issue of whether to exclude certain special taxing districts from the Charter's limit on the growth of the property tax revenue to the rate of inflation. The Commission voted 7-2 (1 Commission member absent and 1 position vacant) to recommend against a Charter amendment to exclude special taxing districts from the Charter limit. (Refer to the information beginning on page 6.)

3. SUPERMAJORITY PROVISIONS FOR BUDGET APPROVAL AND TAX LEVIES

Section 305, Approval of the Budget; Tax Levies

Before the November 2008 election, Commission members expressed their deep concern with a ballot initiative that would require 9 Councilmembers to vote to approve an operating budget including property tax revenue that exceeds the previous year's revenue plus inflation and recommended against this Charter change. Voters approved the Charter amendment. The Commission remains concerned about the wisdom of any Charter provision that requires supermajorities and recommends the next Commission consider this issue. (Refer to the information beginning on page 11.)

4. SPECIAL FUND ABOVE 5% LIMIT TO BE USED WHEN REVENUE COLLECTIONS DO NOT MEET REVENUE PROJECTIONS.

Section 310, Surplus

Several Councilmembers noted that during hard times in the economic cycle, County residents are confronted with increasing needs at the time when County tax revenues are decreasing. Charter §310 limits the accumulation of unappropriated surplus. The Commission began studying a potential revision of §310 to permit the County to save more funds during good times. The Commission 7-1-1 (1 Commissioner absent and 1 position vacant) did not recommend a change in §310. (Refer to the information beginning on page 12.)

5. REDISTRICTING PROCEDURE
Section 104, Redistricting Procedure

The Commission considered the current procedure for redistricting with the goal of identifying an improved process for determining election districts for members of the County Council. The Commission recommended 6-2-1 (1 Commissioner absent and 1 position vacant) not to further study this issue at this time. The Commission noted that there was not much time left in their term and recommends that the next Commission consider whether to study the issue further. (Refer to the information beginning on page 14.)

III. ISSUE AREAS

A. RECOMMENDATIONS FOR CHARTER AMENDMENTS

The Commission is not recommending any Charter changes at this time.

B. RECOMMENDATIONS REQUIRING NO CHARTER CHANGES

1. APPOINTMENT OF THE INSPECTOR GENERAL

Background

The May 2008 Report of the Charter Review Commission included a discussion of whether the Commission should recommend a Charter amendment to include the Inspector General as an entity in the Executive Branch who would be nominated by the County Executive and confirmed by the Council. (See memorandum from Office of the County Attorney on page A-32.) That report reviewed the history of the Office and described the research that the Commission conducted up to the time the report was submitted. At that time, Commission members felt that there were several issues that still needed to be considered before making a recommendation on the matter, including:

- Independence: In the initial establishment of the Office of Inspector General, the independence of the Inspector General was considered to be critical. Would an Inspector General appointed by any County Executive, rather than the Council, be as independent?
- Funding: How would funding for the office be affected by a change in structure? Would the independence of the office be impacted by which branch allocates funding?
- IG Access: Would an Inspector General appointed by the County Executive have the same access to departments and agencies, staff and records as under the current arrangement? Would subpoena power be needed or appropriate?¹

In addition, the Commission agreed that prior to recommending a change in the appointment process, additional research into other local Offices of Inspectors General could be helpful in addressing some of these issues.

Discussion

Between April and October of 2008, Commissioners interviewed the Director of the Office of Legislative Oversight and the Montgomery County Inspector General (see statement from the Inspector General on page A-42), conducted research on the internet and held a public forum to seek input on the questions before them. Commissioners learned that there are only about 12 counties in the nation that have Inspectors General. Among those counties, there is not a universal pattern of authorization, funding, appointment, or scope of responsibility. They also learned that in Montgomery County, the Inspector General has broader jurisdiction to examine complaints of fraud, waste and abuse across county government agencies, than the several Inspectors General within the Maryland state government where they are department specific.

¹ Regarding access to records, there was some concern that the Inspector General has been constrained in the ability to obtain information from bi-county and state agencies such as Montgomery County Public Schools, Washington Suburban Sanitary Commission and the Maryland National Capital Park and Planning Commission. However, this is not a Charter issue.

Therefore, the Commissioners decided to focus their decision on what is or is not working in Montgomery County, Maryland.

The consensus of those interviewed by the Commission and those who testified at the public forum is that the Office of Inspector General enjoys a great deal of independence and the results produced by that Office are not being compromised by the current structure. The current system for funding the Office also seems to provide adequate controls for maintaining independence.

The Commission also discussed the reappointment process. Some Commissioners were concerned that a change in the reappointment process could affect the independence of the Office. If the County Executive was responsible for reappointment, it could be difficult for an Executive to be objective about the person in an Office who has produced, and released to the public, reports that are critical about activities under the oversight of the Executive Branch.

Recommendation

The Commission voted 7-0-2 (1 Commissioners absent and 1 position vacant) to recommend against amending the Charter to provide for an Executive-nominated, Council-confirmed Inspector General. (See minority statement on A-31).

2. SPECIAL TAXING DISTRICTS

Section 305, Approval of the Budget; Tax Levies

Background

The May 2008 Report of the Charter Review Commission included a discussion of whether the Commission should recommend a Charter amendment to exclude special taxing districts from the Charter §305 limit that property tax revenues in a fiscal year not exceed the revenue generated from the previous fiscal year plus the rate of inflation. (See memorandum and

attachments from Glenn Orlin on page A-47.) That report reviewed the current status of special taxing districts and discussed the following potential benefits of removing them from the §305 limits:

1. The taxes are imposed on a defined set of payers, not on County residents as a whole.
2. In the case of the parking lot districts and the urban districts, the benefits often accrue to a wide range of residents (and non-residents) using the services of the district.
3. The special taxes allow the benefits to be created much more quickly and efficiently than other means of financing these projects
4. Noise abatement district expenditures are repaid completely and with interest.
5. Other kinds of limited-area projects or programs might be funded in this way.
6. Removing the special taxing districts from the Charter tax limitation would encourage the use of this valuable fiscal tool.

At the time of its May 2008 report, the Commission had voted 6-3 (2 Commission members absent) that it should devote more time to study of this proposal before deciding whether to recommend excluding certain revenues from special taxing districts from the property tax limitation. Commission members also believed that input from the public and municipalities would be beneficial. At the Commission's October 6 public forum, one individual spoke on the topic and urged that the Charter, in respect to special taxing districts, remain unchanged. Though invited, no municipalities provided testimony on the topic.

Discussion

For FY2009 the total revenue generated by the County's four Parking Lot Districts, three Urban Districts, and two Noise Abatement Districts (all are special taxing districts) represents slightly less than 1% of the total ad valorem property tax revenue collected and the assessable value of these districts is about 6% of the total taxable base County-wide.

Assessable value of the three urban districts (which include three of the parking districts) plus the Montgomery Hills parking district and the two noise abatement districts is \$6.95 billion against a total assessable base of \$174.62 billion for the County, or 3.89%. (See Chart on page A-54 for the Montgomery County Real Property Tax Rate Schedule for Levy Year 2009, which identifies the tax rate in the municipalities and several special taxing districts.)

Commission members met with Montgomery County and M-NCPPC Staff members to better understand how special taxing districts are currently used and how they might be used in the future. The Commission learned that there are potential plans to expand the use of special taxing districts in areas of the County which are the subject of newly adopted Master Plans or Sector Plans. Many of the areas of the County are in need of infrastructure expansions or updates and there has been movement to encourage the private sector to assume more of the infrastructure burden with special taxing districts suggested as a tool to finance such infrastructure projects. A special taxing district placed on certain commercial properties was suggested by one Councilmember as a tool to finance a County-wide bus rapid transit system.

If, for example, a Charter amendment were to exclude certain special taxing districts from the Charter §305 limit using a maximum threshold of 2.5% of total revenues collected, then an additional \$20 million could be generated annually for the County's General Fund.

The Commissioners observed that if the Charter were amended to exclude certain special taxing districts from the Charter §305 limit, there could be a potential for a one-time increase in the property tax rate for the first fiscal year in which the special taxing districts are excluded from the Charter cap. After investigation, Commissioners concluded that the potential one-time increase could be addressed through the careful drafting of language in respect to a recommendation for a change to Charter §305. Commission members noted that a recommendation to amend Charter §305 should include a component to educate voters on special taxing districts and how revenue generated by and for them is different from revenue generated by generally levied property taxes. For example, some special taxing districts, such as development districts which are already excluded from the Charter §305 cap, require the consent of a certain percentage of the property owners that would be in the district.

Commission members reviewed a ballot question from 1998 in which an amendment to Charter §305 was proposed to exclude taxes levied by any special taxing district created by County law to provide specific public services that will increase revenues greater than the inflation rate. That ballot question failed with a vote of: 49.8% favoring the Charter amendment to exclude the special taxing districts to 50.1% opposing the amendment. Commission members determined that several questions about special taxing districts remained unclear, including:

- 1) How would exclusion of certain special taxing districts from the Charter be implemented?
- 2) How would “special taxing district” be defined in the Charter?
- 3) Would the Charter be amended to exclude certain special taxing districts or to include those special taxing districts that might remain subject to the Charter §305 cap?

In the 2008 Report, the Commission noted that in the future if special taxing districts are excluded from the Charter limitation, the amount of funding that could be used for this purpose should be limited. The limitation could be stated in terms of either the county-wide *ad valorem* property tax collections or the total assessable land value of the County. Current special taxing district collections are approximately \$12.2 million out of a total of approximately \$1.43 billion collected in *ad valorem* real property taxes, slightly less than 1%.

Recommendation

The Commission voted 7-2 (1 Commissioner absent and 1 vacant seat) to recommend against excluding special taxing districts from the property tax revenue limitations in §305. In declining to pursue recommendation of an amendment to Charter §305, Commissioners expressed unease that exemption of special taxing districts from the Charter cap would lead to frequent, and possibly excessive, use of this financing tool, as a way to raise total tax revenues without constraint from the Charter limit. In addition, Commissioners believed that it could lead to certain sections of the County voting to tax themselves and thus obtaining greater improvements or benefits than other parts of the County which had declined to place themselves in a special purpose special taxing district. Commissioners also provided the following observations:

- 1) An area can try to incorporate if they want the power to tax themselves.
- 2) The Council has the authority and responsibility to distribute funds throughout the County as it sees fit in order to ensure equitable distribution of benefits.
- 3) The idea of a special taxing district to establish a bus rapid transit system, which by itself could cost \$1.5 billion, in addition to the special taxing districts possibly proposed by M-NCPPC, illustrated to the Commission what pressures might be

brought to increase any cap over time and the risk that use of special taxing districts would become the rule.

- 4) The potential, especially with a special taxing district to establish a bus rapid transit system, that the entire County would benefit from a project, but only part of the County would pay for it.

3. SUPERMAJORITY PROVISIONS FOR BUDGET APPROVAL AND TAX LEVIES.

Section 305, Approval of the Budget; Tax Levies

Before the November 2008 election, Commission members expressed their deep concern with the ballot initiative requiring the vote of 9 Councilmembers to approve an operating budget including property tax revenue that exceeds the previous year's revenue plus inflation. This increase of the required supermajority from 7 to 9 meant that a single Councilmember could block passage of a budget favored by the other 8. This initiative, since it specified 9 members rather than simply unanimity, was also put forward at a time when the Council was reduced to 8 members due to the death of one of the members. Thus even a unanimous vote of the current members could not pass a budget exceeding the Charter limits.

A majority of voters approved the ballot question; however, the Commissioner members remained opposed to the principles behind it. The Commission members therefore, by a vote of 6-1, with two abstentions, voted on December 10, 2008 to consider alternatives to tying property tax increases to something other than a simple majority of the Council vote. On further reflection, however, Commissioners voted at the November 10, 2009 meeting not to pursue the issue further. Some Commissioners noted the brief time period since the voters approved the amendment and felt that the time was not appropriate to consider a different provision.

Furthermore, current economic conditions made it unlikely that a proposed budget requiring a supermajority would be forthcoming for a few years.

The majority of Commission members instead agreed to express their doubts about the wisdom of any Charter provisions requiring supermajorities and to recommend consideration of this issue to the next Charter Review Commission.

4. SPECIAL FUND ABOVE 5% LIMIT TO BE USED WHEN REVENUE COLLECTIONS DO NOT MEET REVENUE PROJECTIONS.
Section 310, Surplus

Background

Section 310 states that "[a]ny unappropriated surplus shall not exceed five percent of the General Fund revenue for the preceding fiscal year" and thereby limits the accumulation of unappropriated surplus. Section 9-1201 of Article 24 of the Maryland Code enables Montgomery County to establish a reserve account to be used in difficult economic times. Article XII of Chapter 20 of the Montgomery County Code specifies how the fund may be used.

In presentations to the Commission, several Councilmembers noted that during hard economic times, such as the present, County residents are confronted with increasing problems (e.g., unemployment, homelessness, and suicides) at the time when County tax revenues are decreasing, thus impairing County government's ability to deal with these problems. In response, the County could: (1) increase County revenues by raising taxes, borrowing funds, or looking to the Federal government for deficit spending, (2) draw from funds saved in good times, or (3) divert funds from other needs to deal with the incremental costs of hard times. (See memorandum on page A-55 for an explanation of how the Executive's recommended FY11 operating budget uses these techniques.)

Section 310 has been before the voters twice before. In 1988, the voters rejected an amendment proposed by the Council to (1) increase the maximum amount of budgeted unappropriated surplus in the General Fund for any fiscal year from 5 to 7 percent of the General Fund revenue for the preceding fiscal year, (2) require a minimum unappropriated surplus of at least 2 percent of the General Fund revenue for the preceding fiscal year, and (3) clarify when and how to measure the surplus. The tally was 136,574 against, 106,580 for.

In 2000, the voters approved an amendment first proposed by the Charter Review Commission, to amend Sections 307, 308, and 310 to allow the Council to (1) approve a supplemental appropriation for any purpose, by vote of at least 6 Councilmembers, during the first half of a fiscal year, and (2) redefine emergency appropriations as special appropriations and broaden the reasons the Council may approve a special appropriation. The tally was for 213,498, against 96,708.

Discussion

Each of the possible governmental responses to the hard times dilemma of increased needs and decreased resources, when considered by itself, appears problematic. Elected officials may also be hesitant to raise substantial amounts of revenues by increasing the property tax rate or the County income tax or by imposing additional excise taxes (e.g., energy tax, hotel/motel tax, telephone tax, admissions/amusement tax)."² Revenues from the Federal government will fall far short of closing the current deficit, and Charter §312 prohibits indebtedness for a term of more than one year to fund the operating budget. Accordingly, the Commission considered ways to encourage saving money during good economic times. It is generally recognized that the existence of savings is considered important by the bond rating agencies, and that the County's

² According to the Washington Post, March 11, 2010, p. A21, some states have recently increased taxes.

bond rating is dependent on the savings. Conversely, however, speakers³ indicated that legislative bodies are reluctant to tax in good economic times to save for hard times. The Commission noted that despite this reluctance, the Montgomery County Revenue Stabilization Fund has amassed roughly \$120 million in the past 15 years. One speaker⁴ suggested that there are alternatives to increasing the rate of savings in good economic times.

Recommendation

The Commission believes that §310 in its current form is sufficient for various reasons, including that changes in §310 would not increase the ability of the County to deal with hard times, and that requests to the electorate to change §310 might lead to counterproductive results. Additionally, Commissioners had a greater understanding of the County's Revenue Stabilization Fund, which is an emergency fund that was established in the 1990s to support government appropriations that become unfunded. The law requires that if the County receives more revenue than what was projected from certain economically sensitive sources (income tax, real property transfer tax, recordation tax, and investment income), a certain percentage must be put into this Fund, up to the Fund cap. Therefore, the Commission, 7-1-1, recommended against a change in the language of §310.

5. REDISTRICTING PROCEDURE

Section 104, Redistricting Procedure

Background

A Redistricting Commission must be appointed to redraw the boundaries of County Council districts after each decennial census. In 1998, §104 of the County Charter was amended to enlarge the Redistricting Commission from five members to nine. It was hoped at the time

³ Timothy Firestine, Chief Administrative Officer, on October 14, 2009, and Nick Johnson and Phil Oliff came from the Center on Budget Priorities on March 11, 2009.

⁴ Mr. Firestine.

that this larger group would be more representative of the County. (See discussions in the 1996 and 1998 reports of the Charter Review Commission.) The current Charter Review Commission considered this subject again with the goal of identifying an improved process for determining election districts for members of the County Council. They studied jurisdictions nationwide to see what limits they place upon the formation and operation of their Redistricting Commissions.

Discussion

Montgomery County's Redistricting Commission is dominated by the two main political parties, each of which nominates eight candidates for membership. In order for a political party to have representation on the Redistricting Commission, the Charter requires that 15% of the total votes for all candidates for Council in the last preceding regular election be cast by members of that party. The County Council is required to appoint four members from each slate submitted by a qualifying party and name a ninth member of its own choosing. Unless the Council appoints an unaffiliated voter, a member of a third party, or a party reaches the 15% participation threshold, this denies participation in the redistricting process to the nearly 25% of voters who register with no party or a smaller party. The only stated qualifications for membership on the Redistricting Commission are that a Commissioner cannot hold an elective office, at least one must reside in each Council District, and the number of members of the Commission who reside in the same Council district must not exceed the number of political parties which submitted a list to the Council.

In order to determine whether there might be a better way to select a redistricting Commission and to draw district lines, members of the Commission did independent research and submitted their findings to the Commission for review. These reports are included in the Appendix beginning on page A-56. They include:

- Procedures for Better Redistricting, January 11, 2010
- Whether a Charter Amendment Should Impose Standards on a Councilmanic redistricting plan, December 8, 2009
- Redistricting Commission and Criteria in Six States, December 8, 2009
- Redistricting Procedures in Maryland Counties and Baltimore City, November 30, 2009
- Summary of Non-Governmental Organization Recommendations on Redistricting, January 3, 2010
- Political Science Literature about Redistricting Process, December 2, 2009
- A Menu of Issues and Possible Charter Changes, January 13, 2010

In contrast to our bi-partisan Redistricting Commission, many “good government” groups recommend non-partisan commissions that, in theory, would not deliberately draw district lines to favor a political party, a group, or a person. Some states list specific standards for how to draw the lines. A few such as California go further and try to assure that members of a Redistricting Commission are representative of the electorate and unbiased.

The memorandum on page A-56 gives a compact summary of the Charter Review Commissioners research findings, preceded by some motivation for the study.

Recommendations

After the Charter Review Commission had reviewed the above research, the ad hoc Redistricting Study Committee Chair (Wolff) offered a menu of possible changes in the County Charter. (See Memorandum on A Menu of Issues and Possible Charter Changes on page A-85.) Commissioners did not reach consensus on a different approach for forming a Redistricting Commission. For a variety of reasons, the Commission-voted to close discussion of this subject and voted 6-2-1 not to pursue the issue further. The Commission noted that there was not much time left in their term and recommends that the next Commission review their extensive research and consider whether to study the issue further.



APPENDIX



Charter of Montgomery County, Maryland

Montgomery County Government

County Executive

Isiah Leggett

County Council

Phil Andrews
Roger Berliner
Marc Elrich
Valerie Ervin
Nancy M. Floreen

Michael J. Knapp
George L. Leventhal
Donald Praisner
Duchy Trachtenberg

MONTGOMERY COUNTY CODE

PART I. THE CHARTER.*

Article 1. Legislative Branch.

- § 101. County Council.
- § 102. Composition and Election.
- § 103. Council Districts.
- § 104. Redistricting Procedure.
- § 105. Term of Office.
- § 106. Vacancies.
- § 107. Compensation.
- § 108. Officers of the Council.
- § 109. Sessions.
- § 110. Exercise of Zoning, Planning and Other Powers.
- § 111. Enactment of Legislation.
- § 112. Effective Date of Legislation.
- § 113. Publication of Legislation.
- § 114. Referendum.
- § 115. Referendum Procedure.
- § 116. Legislative Procedure.
- § 117. Limitations.
- § 118. Removal of Councilmembers.

***Editor's note**—The current County Charter was adopted at an election held Nov. 5, 1968, and, as indicated by history notes accompanying amended sections, was amended by subsequent elections. The County's first Charter was adopted in 1948.

MONTGOMERY COUNTY CODE
The Charter

Article 2. Executive Branch.

- § 201. Executive Power.
- § 202. Election and Term of Office.
- § 203. Qualifications.
- § 204. Compensation.
- § 205. Vacancy.
- § 206. Removal of the County Executive.
- § 207. Temporary Absence or Disability.
- § 208. Veto.
- § 209. Information on Executive Branch.
- § 210. Chief Administrative Officer.
- § 211. Duties of the Chief Administrative Officer.
- § 212. Principal Departments.
- § 213. County Attorney.
- § 214. Department of Finance.
- § 215. Appointments.
- § 216. Appointment of Other Employees of the Executive Branch.
- § 217. Reorganization of the Executive Branch.
- § 218. Internal Audits.

Article 3. Finance.

- § 301. Fiscal Year.
- § 302. Six-Year Programs for Public Services, Capital Improvements, and Fiscal Policy.

MONTGOMERY COUNTY CODE
The Charter

§ 303. Capital and Operating Budgets.

§ 304. Budget Hearing.

§ 305. Approval of the Budget; Tax Levies.

§ 306. Item Veto or Reduction.

§ 307. Supplemental Appropriations.

§ 308. Special Appropriations.

§ 309. Transfer of Funds.

§ 310. Surplus.

§ 311. Limitations on Expenditures.

§ 312. Indebtedness.

§ 313. Purchasing.

§ 314. Competitive Procurement.

§ 315. Audit.

§ 316. Public Access to Fiscal Documents.

Article 4. Merit System and Conflicts of Interest.

§ 401. Merit System.

§ 402. Personnel Administration.

§ 403. Merit System Protection Board.

§ 404. Duties of the Merit System Protection Board.

§ 405. Political Activity.

§ 406. Prohibition Against Private Use of Public Employees.

§ 407. Prohibition Against Additional Compensation.

MONTGOMERY COUNTY CODE
The Charter

§ 408. Work During Official Hours.

§ 409. Corrupt Practices.

§ 410. Code of Ethics.

§ 411. Reserved.

Article 5. General Provisions.

§ 501. Disaster—Continuity of Government During Emergencies.

§ 502. Annual Report.

§ 503. Annual Compilation of Laws.

§ 504. County Code.

§ 505. Right to Information.

§ 506. Separability.

§ 507. Amendment.

§ 508. Effective Date.

§ 509. Charter Review Commission.

§ 510. Collective Bargaining.

§ 510A. Collective Bargaining—Fire Fighters.

§ 511. Collective Bargaining—County Employees.

§ 512. Hearing Examiners.

§ 513. Effect of Certain Amendments.

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CHARTER
OF
MONTGOMERY COUNTY, MARYLAND

Preamble

We, the people of Montgomery County, Maryland, a body corporate and politic, under the Constitution and general laws of the State of Maryland, do adopt this Charter as our instrument of government.

ARTICLE 1. LEGISLATIVE BRANCH.

Sec. 101. County Council.

All legislative powers which may be exercised by Montgomery County under the Constitution and laws of Maryland, including all law making powers heretofore exercised by the General Assembly of Maryland but transferred to the people of the County by virtue of the adoption of this Charter, and the legislative powers vested in the County Commissioners as a District Council for the Montgomery County Suburban District, shall be vested in the County Council. The legislative power shall also include, but shall not be limited to, the power to enact public local laws for the County and repeal or amend local laws for the County heretofore enacted by the General Assembly upon the matters covered by Article 25A, Annotated Code of Maryland, 1957, as now in force or hereafter amended, and the power to legislate for the peace, good government, health, safety or welfare of the County. Nothing herein contained shall be construed to authorize or empower the County Council to enact laws or regulations for any incorporated town, village or municipality in said County on any matter covered by the powers granted to said town, village or municipality by the act incorporating it or any subsequent act or acts amendatory thereto.

Editor's note—The authorization of a road project is an executive rather than a legislative administrative act. Eggert v. Montgomery County Council 263 Md. 243, 282 A.2d 474 (1971).

See County Attorney Opinion dated 6/8/04-A describing the possible violation of separation of powers in a law authorizing the Council to set certain transportation fees without County Executive approval. See County Attorney Opinion dated 4/21/04 discussing the limited authority of the Commission on People With Disabilities and the role of the County Attorney as the legal advisor for the County. See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter.

Sec. 102. Composition and Election.

The Council shall be composed of nine members, each of whom shall be a qualified voter of Montgomery County. Four Councilmembers shall be nominated and elected by the qualified voters of the entire County. Each of the five other members of the Council shall, at the time of election, reside in a different Council district, and shall be nominated and elected by the qualified voters of that district. No member of the Council shall hold any other office of profit in state, county or municipal government. No

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member of the Council shall be eligible for appointment during the member's term of office to any other office or position carrying compensation created by or under this Charter, except to County Executive in the event of a vacancy. (Election of 11-2-82; election of 11-4-86; election of 11-3-98.)

Editor's note—See County Attorney Opinion No. 90.003 dated 3/30/90-A explaining that the County Charter requires a candidate for Council to reside in the councilmanic district that the person seeks to represent.

Sec. 103. Council Districts.

Montgomery County shall be divided into five Council districts for the purpose of nominating and electing five members of the Council. Each district shall be compact in form and be composed of adjoining territory. Populations of the Council districts shall be substantially equal. (Election of 11-3-98.)

Editor's note—See County Attorney Opinion dated 3/20/91 explaining that the Redistricting Commission may consider and recognize natural and public municipal boundaries in creating new boundaries for councilmanic districts [updates 1981 analysis]. See County Attorney Opinion dated 3/20/91-A describing the impact of the Voting Rights Act on redistricting.

Sec. 104. Redistricting Procedure.

The boundaries of Council districts shall be reviewed in 1972 and every tenth year thereafter. Whenever district boundaries are to be reviewed, the Council shall appoint, not later than February 1 of the year before the year in which redistricting is to take effect, a commission on redistricting. The Commission shall be composed of four members from each political party chosen from a list of eight individuals submitted by the central committee of each political party which polled at least fifteen percent of the total vote cast for all candidates for the Council in the last preceding regular election. Each list shall include at least one individual who resides in each Council district. The Council shall appoint one additional member of the Commission. The Commission shall include at least one member who resides in each Council district, and the number of members of the Commission who reside in the same Council district shall not exceed the number of political parties which submitted a list to the Council. The Commission shall, at its first meeting, select one of its members to serve as its chair. No person who holds any elected office shall be eligible for appointment to the Commission.

By November 15 of the year before the year in which redistricting is to take effect, the Commission shall present a plan of Council districts, together with a report explaining it, to the Council. Within thirty days after receiving the plan of the Commission, the Council shall hold a public hearing on the plan. If within ninety days after presentation of the Commission's plan no other law reestablishing the boundaries of the Council districts has been enacted, then the plan, as submitted, shall become law. (Election of 11-2-82; election of 11-3-98.)

Editor's note—See County Attorney Opinion No. 95.003 dated 12/6/95 explaining that the Council retains the authority to control whether the Commission on Redistricting plan becomes law, but the Council must take action within 90 days of receiving the plan. See County Attorney Opinion dated 1/9/92 explaining that not all meetings fall within the Open Meetings Act and, therefore, not all meetings need to be open to the public or included in public notice.

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Sec. 105. Term of Office.

Members of the Council shall hold office for a term beginning at noon on the first Monday of December next following the regular election for the Council and ending at noon on the first Monday of December in the fourth year thereafter.

Sec. 106. Vacancies.

A vacancy shall occur when any member of the Council shall, before the expiration of the term for which the member was elected, die, resign the office, become disqualified for membership on the Council, or be removed from office. Unless the Council has provided by law for filling a vacancy by special election, the following process for filling a vacancy shall apply. When a vacancy has occurred, a majority of the remaining members of the Council shall appoint a person to fill the vacancy within thirty days. An appointee to fill a vacancy, when succeeding a party member, shall be a member of the same political party as the person elected to such office at the time of election. If the Council has not acted within thirty days, the County Executive shall appoint a person to fill the vacancy within ten days thereafter. If a person having held the vacant position was a member of a political party at the time of election, the person appointed by the County Executive shall be the nominee of the County Central Committee of that party. An appointee shall serve for the unexpired term of the previous member. Any member appointed to fill a vacancy shall meet the same qualifications and residence requirements as the previous member. (Election of 11-2-82; election of 11-8-88; election of 11-3-98.)

Editor's note—See County Attorney Opinion dated 2/19/99 discussing filling an interim Council vacancy by temporary appointment pending a special election.

Sec. 107. Compensation.

The Council shall prescribe by law the compensation for its members. Membership on the Council shall be considered a full-time position for the purpose of determining compensation. No change in the compensation of members of the Council shall become effective during the term of office of the Council enacting the change. (Election of 11-7-06.)

Sec. 108. Officers of the Council.

The Council shall elect, from among its members, a president of the Council, who shall preside over meetings of the Council. The Council may provide for the selection of such other officers or employees as it may deem desirable for the exercise of its powers. The Council may employ or retain special legal counsel to assist it in the exercise of its powers, and may provide by law for special legal counsel to assist, advise, or represent any office of the legislative branch in the exercise of its duties. Any special legal counsel employed or retained under this section shall be subject to appropriation and is not subject to Section 213. (Election of 11-6-84; election of 11-5-02.)

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Sec. 109. Sessions.

The first and third Tuesdays of each month, and such additional days as the Council may determine, are designated as days for the enactment of legislation, but the Council shall not sit for more than forty-five days in each year for the purpose of enacting legislation. When a first or third Tuesday is an official holiday, the next succeeding Tuesday business day shall be a day for the enactment of legislation. The Council may sit in nonlegislative sessions at such other times as it may determine. In nonlegislative sessions, the Council may adopt rules and regulations which implement or provide for the administration or execution of legislation under procedures and provisions for notice and hearing prescribed by law. The Council shall not take or discuss any action except in public session or in a closed session expressly allowed by the Council rules of procedure. The Council rules of procedure shall permit the same or greater public access to Council sessions as the state Open Meetings Act or any successor state law. The Council shall not make or confirm any appointment in a closed session. (Election of 11-4-80; election of 11-2-82; election of 11-5-02.)

Editor's note—In Montgomery Citizens League v. Greenhalgh 253 Md. 151, 252 A.2d 242 (1969), it was held that the council need not designate an emergency extra session a legislative day separate and apart from the call of the session.

See County Attorney Opinion dated 7/14/00 discussing the need to modernize the Charter in relation to access to documents. See County Attorney Opinion dated 6/19/00 recommending an amendment to the Charter to conform with State law.

Sec. 110. Exercise of Zoning, Planning and Other Powers.

In the exercise of powers authorized by any act of the General Assembly or the Constitution of Maryland, other than the law making power vested in it by article XI-A of the Constitution and the grant of express powers in Article 25A, Annotated Code of Maryland, 1957, the Council shall follow the procedure set forth in such law or section of the Constitution and the exercise thereof shall be effected in the manner prescribed therein. The powers relating to zoning, planning or subdividing shall be exercised as prescribed by law. (Election of 11-4-86; election of 11-8-88.)

Sec. 111. Enactment of Legislation.

The Council shall enact legislation only after public hearing upon reasonable notice. No legislation shall be enacted by the Council unless it receives the affirmative vote of five members of the Council. Legislation containing a section declaring that it is necessary for the immediate protection of the public health, safety, or interest, and enacted by the affirmative vote of at least six members of the Council, shall be expedited legislation. Expedited legislation, as defined in this section, is the emergency legislation referred to in Article XI-A, Section 3, of the Constitution of Maryland. Any vote cast by a member on any legislation shall be recorded in the journal of the Council. (Election of 11-4-86; election of 11-5-02.)

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Sec. 112. Effective Date of Legislation.

All legislation, except expedited legislation, shall take effect ninety-one days after the date when it becomes law, unless a later effective date is prescribed in the legislation. Expedited legislation shall take effect on the date when it becomes law, unless a different effective date is prescribed in the legislation. (Election of 11-2-82; election of 11-5-02.)

Sec. 113. Publication of Legislation.

All legislation shall be published as required by the Constitution and laws of Maryland. In addition, a summary of any legislation, except expedited legislation, enacted by the Council shall be published before the date when it takes effect, in such manner as the Council shall prescribe by law. A summary of expedited legislation shall be published promptly after enactment. (Election of 11-5-02.)

Sec. 114. Referendum.

Any legislation enacted by the Council shall be submitted to a referendum of the voters upon petition of five percent of the registered voters of the County except legislation (1) appropriating money or imposing taxes, (2) prescribing Councilmanic districts, (3) authorizing the issuance of bonds or other financial obligations for a term of less than twelve months, and (4) authorizing obligations for public school sites, construction, remodeling, or public school buildings, whenever the total amount of such obligations authorized to be issued in any one year does not exceed one-fourth of one percent of the assessable base of the County. (Election of 11-7-78; election of 11-6-90.)

Editor's note—Charter § 114 is quoted in Doe v. Montgomery County Board of Elections, 406 Md. 697, 962 A.2d 342 (2008).

Sec. 115. Referendum Procedure.

Any petition to refer legislation to the voters of the County shall be filed with the Board of Elections within ninety days after the date when the legislation becomes law, provided that fifty percent of the required signatures accompanying the petition are filed within seventy-five days after the date when the legislation becomes law. When a referendum petition that contains the required signatures has been filed, the legislation to be referred shall not take effect until thirty days after its approval by a majority of the registered voters voting thereon. Expedited legislation shall remain in effect from the date it becomes law notwithstanding the filing of a petition for referendum, but shall be repealed thirty days after its rejection by a majority of the registered voters voting thereon. (Election of 11-7-78; election of 11-5-02.)

Editor's note—Charter § 115 is cited in Doe v. Montgomery County Board of Elections, 406 Md. 697, 962 A.2d 342 (2008).

Sec. 116. Legislative Procedure.

Consistent with law and the provisions of this Charter, the Council shall, by resolution, prescribe its rules of procedure and provide for the publication of its proceedings.

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Sec. 117. Limitations.

Neither the Council, nor any member thereof, shall appoint, dismiss, or give directions to any individual employee of the Executive Branch of the County Government.

Sec. 118. Removal of Councilmembers.

A member of the County Council may be removed from office by the affirmative vote of not less than six members of the Council after a public hearing and upon a finding that the Councilmember is unable by reason of physical or mental disability to perform the duties of the office. The decision of the Council may be appealed by the removed Councilmember within ten days to the Circuit Court by petition. Upon the filing of a petition, the Court may stay the removal pending its decision. Upon appeal, the Court may make *de novo* determinations of fact. A member of the County Council also may be suspended and removed from office in the manner provided in Section 2 of Article XV of the Constitution of Maryland. (Election of 11-2-82; election of 11-4-86.)

ARTICLE 2. EXECUTIVE BRANCH.

Sec. 201. Executive Power.

The executive power vested in Montgomery County by the Constitution and laws of Maryland and by this Charter shall be vested in a County Executive who shall be the chief executive officer of Montgomery County and who shall faithfully execute the laws. In such capacity, the County Executive shall be the elected executive officer mentioned in Article XI-A, Section 3, of the Constitution of Maryland. The County Executive shall have no legislative power except the power to make rules and regulations expressly delegated by a law enacted by the Council or by this Charter. (Election of 11-2-82.)

Editor's note—The authorization of a road project is an executive rather than an administrative act, Eggert v. Montgomery County Council, 263 Md. 243, 282 A.2d 474 (1971).

See County Attorney Opinion dated 6/8/04-A describing the possible violation of separation of powers in a law authorizing the Council to set certain transportation fees without County Executive approval. See County Attorney Opinion dated 4/21/04 discussing the limited authority of the Commission on People with Disabilities and the role of the County Attorney as the legal advisor for the County. See County Attorney Opinion dated 7/22/98 commenting on the means of requiring binding dispute resolution process. See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter.

Sec. 202. Election and Term of Office.

The County Executive shall be elected by the qualified voters of the entire County at the same time as the council and shall serve for a term of office commencing at noon on the first Monday of December next following the election, and ending at noon on the first Monday of December in the fourth year thereafter, or until a successor shall have qualified. (Election of 11-2-82.)

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Sec. 203. Qualifications.

The County Executive shall have been a resident of Montgomery County for the year preceding the election or appointment, shall be not less than thirty years of age, shall be a qualified voter of Montgomery County and shall not hold any other office of profit in federal, state, county or municipal government. The County Executive shall not, during the term of office, be eligible for appointment to any other County office or position carrying compensation. The County Executive shall devote full time to the duties of the office and shall not participate in any private occupation for compensation. (Election of 11-2-82.)

Editor's note—2000 L.M.C., ch. 4, § 1, added Section 1A-107, County Executive Residency Requirement, to Chapter 1A, Establishing the Structure of County Government, which states that the County Executive must have been a resident of the County for one year before the Executive is elected or appointed.

See County Attorney Opinion dated 11/26/01 explaining that the police department cannot void red-light citations issued based upon an automated traffic control signal, but the County Attorney may do so.

Sec. 204. Compensation.

The compensation of the County Executive shall be prescribed by the Council by law. The council shall not change the compensation of any County Executive during the term of office to which elected. (Election of 11-2-82.)

Editor's note—See County Attorney Opinion dated 2/19/97 explaining that the County Executive has the authority to establish a separate salary schedule for non-merit heads of departments and principal offices within the Executive Branch. [attachment]

Sec. 205. Vacancy.

A vacancy in the office of County Executive shall exist upon the death, resignation, disqualification, or removal of the County Executive. The Council, by a vote of not less than five members, shall appoint a successor to fill the vacancy within forty-five days of the vacancy. An appointee to fill a vacancy, when succeeding a party member, shall be a member of the same political party as the person elected to such office at the time of election. If the Council has not made an appointment within forty-five days, the Council shall appoint within fifteen days thereafter the nominee of the County Central Committee of the political party, if any, of the person elected to such office. The Chief Administrative Officer shall act as County Executive and perform all the duties of that office until such time as the vacancy has been filled. (Election of 11-2-82; election of 11-4-86.)

Editor's note—See County Attorney Opinion dated 2/19/99 discussing filling an interim Council vacancy by temporary appointment pending a special election.

Sec. 206. Removal of the County Executive.

The County Executive may be removed from office by the affirmative vote of not less than six members of the Council after a public hearing and upon a finding that the County Executive is unable by

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reason of physical or mental disability to perform the duties of the office. The decision of the Council may be appealed by the County Executive within ten days to the Circuit Court by petition. Upon the filing of a petition, the Court may stay the removal pending its decision. Upon appeal, the Court may make *de novo* determinations of fact. The County Executive also may be suspended and removed from office in the manner provided in Section 2 of Article XV of the Constitution of Maryland. (Election of 11-2-82; election of 11-4-86.)

Sec. 207. Temporary Absence or Disability.

In the event of the temporary absence or disability of the County Executive, the Chief Administrative Officer shall perform the duties of the County Executive, unless the County Executive shall designate in writing some other person in the Executive Branch.

Sec. 208. Veto.

Upon the enactment of any legislation by the Council, the Council President shall within three days deliver it to the County Executive, who within ten days after receiving it shall approve or disapprove it. If the Executive disapproves such legislation, the Executive shall return it to the Council within ten days after receiving it, with the reasons for the Executive's disapproval stated in writing. Not later than 60 days after receiving the Executive's message of disapproval, the Council may, by the affirmative vote of six members, enact legislation over the disapproval of the Executive. Any legislation which the Executive has neither approved nor disapproved shall become law on the eleventh day after the Executive receives it. The Council may by law further specify how any period of time mentioned in this section is measured. (Election of 11-2-82; election of 11-4-86; election of 11-6-90; election of 11-7-06.)

Editor's note—See County Attorney Opinion dated 6/8/04-A describing the possible violation of separation of powers in a law authorizing the Council to set certain transportation fees without County Executive approval.

Sec. 209. Information on Executive Branch.

The County Executive shall provide the Council with any information concerning the Executive Branch that the Council may require for the exercise of its powers.

Editor's note—Section 209 of the Montgomery County Charter was quoted in Caffrey v. Montgomery County, 370 Md. 272, 805 A.2d 268 (2002).

Sec. 210. Chief Administrative Officer.

The County Executive shall appoint a Chief Administrative Officer subject to confirmation by the Council. The Chief Administrative Officer shall be a professionally qualified administrator who shall serve at the pleasure of the County Executive, with compensation determined by the County Executive subject to the approval of the Council. (Election of 11-2-82.)

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Editor's note—See County Attorney Opinion dated 7/8/02 describing the extent to which quasi-judicial officials may engage in political activities. See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter. See County Attorney Opinion dated 2/19/97 explaining that the County Executive has the authority to establish a separate salary schedule for non-merit heads of departments and principal offices within the Executive Branch. [attachment]

Sec. 211. Duties of the Chief Administrative Officer.

The Chief Administrative Officer shall, subject to the direction of the County Executive, supervise all departments, offices, and agencies of the Executive Branch, advise the County Executive on all administrative matters and perform such other duties as may be assigned by the County Executive, or by this Charter. (Election of 11-2-82.)

Editor's note—See County Attorney Opinion dated 7/8/02 describing the extent to which quasi-judicial officials may engage in political activities. See County Attorney Opinion dated 4/13/99 (4/15/99 on cover memo) analyzing the Chief Administrative Officer's authority to make a sole-source contract in excess of \$25,000 without obtaining consent of the director of procurement or the contract review committee. See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter. See County Attorney Opinion dated 4/4/91 explaining that a special assistant to the County Executive may serve as the supervisor of the merit system employees assigned to work in the Office of Minority and Multicultural Affairs with no effect on the status and rights of the employees.

Sec. 212. Principal Departments.

In the Executive Branch there shall be an Office of the County Attorney, a Department of Finance and any departments, agencies, offices, or other bodies prescribed by this Charter, or by the Council by law.

Editor's note—See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter.

Sec. 213. County Attorney.

The County Executive shall appoint a County Attorney, subject to confirmation by the Council. The County Attorney shall be the chief legal officer of the County, conduct all the law business of the County, be a legal advisor to the Council, and be the legal advisor to the County Executive, all departments, and other instrumentalities of the County Government. The County Attorney shall represent the County in all actions in which the County is a party. The County Attorney and the staff of the office shall engage in no other law practice. The County Attorney may, with the approval of the Council, temporarily employ special legal counsel to work on problems of an extraordinary nature when the work to be done is of such character or magnitude as to require services in addition to those regularly provided by the County Attorney. The County Attorney shall serve at the pleasure of the County Executive but,

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upon request, shall be entitled to a public hearing before the Council prior to dismissal from office. (Election of 11-2-82; election of 11-6-84.)

Editor's note—See County Attorney Opinion dated 4/21/04 discussing the limited authority of the Commission on People with Disabilities and the role of the County Attorney as the legal advisor for the County. See County Attorney Opinion dated 4/26/99 explaining that a transfer of development rights easement continues to restrict development even when the underlying zoning of the property is changed. See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter. See County Attorney Opinion dated 4/18/91 explaining that it is inappropriate for the County Attorney's Office to respond to requests for legal advice from a source outside of the County government.

Sec. 214. Department of Finance.

The Department of Finance shall be the custodian of all County funds, securities and insurance policies; collect taxes, special assessments, license fees and other revenue; manage indebtedness, invest and disburse County funds; prepare an Annual Financial Report containing a detailed account of all monies received and paid out by the County and perform such other functions as shall be prescribed by law. (Election of 11-8-88.)

Sec. 215. Appointments.

The County Executive, after receiving the advice of the Chief Administrative Officer, shall appoint a single officer to head each department, principal office or agency of the Executive Branch, and an officer to fill any position in the Executive Branch designated by law as a non-merit position, all subject to the confirmation of the Council. Except for commissions appointed to advise the Council, the County Executive shall appoint, subject to the confirmation of the Council, all members of boards and commissions unless otherwise prescribed by state law or this Charter. (Election of 11-8-94.)

Editor's note—See County Attorney Opinion dated 1/27/03 explaining that the interagency coordinating board membership provision in the Code does not conflict with the Charter appointment provision or with the State enabling law. See County Attorney Opinion dated 2/19/99 discussing filling an interim Council vacancy by temporary appointment pending a special election. See County Attorney Opinion dated 5/22/98 explaining that a recreation area advisory board does not have the authority to elect representatives to the County Recreation Board; those representatives are appointed by the County Executive. See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter. See County Attorney Opinion dated 4/4/91 explaining that a special assistant to the County Executive may serve as the supervisor of the merit system employees assigned to work in the Office of Minority and Multicultural Affairs with no effect on the status and rights of the employees.

Sec. 216. Appointment of Other Employees of the Executive Branch.

All employees of the Executive Branch other than those specifically provided for in this Charter shall be appointed and removed and their salaries shall be fixed under the merit system by the heads of the several departments, offices and agencies of the County.

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Editor's note—See County Attorney Opinion dated 11/12/97 indicating that the Charter permits the use of merit system employees for pilot programs and enterprise programs, but prohibits the use of contract employees for these programs. See County Attorney Opinion dated 4/4/91 explaining that a special assistant to the County Executive may serve as the supervisor of the merit system employees assigned to work in the Office of Minority and Multicultural Affairs with no effect on the status and rights of the employees.

Sec. 217. Reorganization of the Executive Branch.

The Council may prescribe by law the organization of the Executive Branch of County Government. The County Executive may submit to the Council in writing, reorganization plans reallocating powers, functions or responsibilities of the various departments and agencies of the Executive Branch. A reorganization plan shall become law ninety days following its presentation to the Council, if by that time it has not been disapproved by a vote of five members of the Council. (Election of 11-4-86.)

Editor's note—See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter.

Sec. 218. Internal Audits.

The County Executive shall cause internal audits of all departments, offices and agencies of the Executive Branch, and other internal audits as prescribed by law, to be performed. (Election of 11-8-88.)

ARTICLE 3. FINANCE.

Sec. 301. Fiscal Year.

The fiscal year of the County shall commence on July 1 of each year and end on June 30 in the following year, unless otherwise prescribed by state law.

Editor's note—See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations.

Sec. 302. Six-Year Programs for Public Services, Capital Improvements, and Fiscal Policy.

The County Executive shall submit to the Council, not later than January 15 of each even-numbered year, a comprehensive six-year program for capital improvements. The County Executive shall submit to the Council, not later than March 15 of each year, comprehensive six-year programs for public services and fiscal policy. The six-year programs shall require a vote of at least five Councilmembers for approval or modification. Final Council approval of the six-year programs shall occur at or about the date of budget approval.

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The public services program shall include a statement of program objectives and recommend levels of public service by the County government, and shall provide an estimate of costs, a statement of revenue sources, and an estimate of the impact of the program on County revenues and the capital budget.

The capital improvements program shall include a statement of the objectives of capital programs and the relationship of capital programs to the County's long-range development plans; shall recommend capital projects and a construction schedule; and shall provide an estimate of costs, a statement of anticipated revenue sources, and an estimate of the impact of the program on County revenues and the operating budget. The capital improvements program shall, to the extent authorized by law, include all capital projects and programs of all agencies for which the County sets tax rates or approves budgets or programs. The Council may amend an approved capital improvements program at any time by an affirmative vote of six Councilmembers.

The fiscal program shall show projections of revenues and expenditures for all functions, recommend revenue and expenditure policies for the program period and analyze the impact of tax and expenditure patterns on public programs and the economy of the County.

The County Executive shall provide such other information relating to these programs as may be prescribed by law.

All capital improvement projects which are estimated to cost in excess of an amount to be established by law or which the County Council determines to possess unusual characteristics or to be of sufficient public importance shall be individually authorized by law; provided however, that any project declared by the County Council to be of an emergency nature necessary for the protection of the public health or safety shall not be subject to this requirement if the project is approved by the affirmative vote of six Councilmembers. Any project mandated by law, statutory or otherwise, interstate compact, or any project required by law to serve two or more jurisdictions shall, likewise, not be subject to this requirement. The County Council shall prescribe by law the methods and procedures for implementation of this provision. (Election of 11-7-78; election of 11-4-86; election of 11-3-92; election of 11-5-96.)

Editor's note—See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations. See County Attorney Opinion dated 2/5/96 explaining that the budget must include recommended expenditures and revenue services for the Board of Education and including the legislative history of the section. See County Attorney Opinion No. 90.008 dated 11/20/90 discussing the use of consent calendars to consolidate capital improvement bills and proposed amendments to the County Code to permit more than one item on the consent calendar at a time. [attachment]

Sec. 303. Capital and Operating Budgets.

The County Executive shall submit to the Council, not later than January 15 and March 15, respectively of each year, proposed capital and operating budgets including recommended expenditures and revenue sources for the ensuing fiscal year and any other information in such form and detail as the County Executive shall determine and as may be prescribed by law. These budgets shall be consistent

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with the six-year programs. A summary shall be submitted with the budgets containing an analysis of the fiscal implications for the County of all available budgets of any agencies for which the Council sets tax rates, makes levies, approves programs or budgets. (Election of 11-6-84; election of 11-3-92.)

Editor's note—See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations. See County Attorney Opinion dated 6/9/98 addressing the creation of Department of Liquor Control by State law and the department's funding and expenditures. See County Attorney Opinion dated 5/8/98 explaining that State law created the Department of Liquor Control and gives the Council oversight over the department, but does not give the Council budget or appropriation authority. See County Attorney Opinion dated 2/5/96 explaining that the budget must include recommended expenditures and revenue services for the Board of Education and including the legislative history of the section.

Sec. 304. Budget Hearing.

The Council shall hold public hearings on the proposed budget and the six-year programs required by this Charter, commencing not earlier than twenty-one days following their receipt.

Sec. 305. Approval of the Budget; Tax Levies.

The Council may add to, delete from, increase or decrease any appropriation item in the operating or capital budget. The Council shall approve each budget, as amended, and appropriate the funds therefor not later than June 1 of the year in which it is submitted.

An aggregate operating budget which exceeds the aggregate operating budget for the preceding fiscal year by a percentage increase greater than the annual average increase of the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or any successor index, for the twelve months preceding December first of each year requires the affirmative vote of six Councilmembers. For the purposes of this section, the aggregate operating budget does not include: (1) the operating budget for any enterprise fund; (2) the operating budget for the Washington Suburban Sanitary Commission; (3) expenditures equal to tuition and tuition-related charges estimated to be received by Montgomery College; and (4) any grant which can only be spent for a specific purpose and which cannot be spent until receipt of the entire amount of revenue is assured from a source other than County government.

The Council shall annually adopt spending affordability guidelines for the capital and operating budgets, including guidelines for the aggregate capital and aggregate operating budgets. The Council shall by law establish the process and criteria for adopting spending affordability guidelines. Any aggregate capital budget or aggregate operating budget that exceeds the guidelines then in effect requires the affirmative vote of seven Councilmembers for approval.

By June 30 each year, the Council shall make tax levies deemed necessary to finance the budgets. Unless approved by an affirmative vote of nine, not seven, Councilmembers, the Council shall not levy an ad valorem tax on real property to finance the budgets that will produce total revenue that exceeds the total revenue produced by the tax on real property in the preceding fiscal year plus a percentage of the

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previous year's real property tax revenues that equals any increase in the Consumer Price Index as computed under this section. This limit does not apply to revenue from: (1) newly constructed property, (2) newly rezoned property, (3) property that, because of a change in state law, is assessed differently than it was assessed in the previous tax year, (4) property that has undergone a change in use, and (5) any development district tax used to fund capital improvement projects. (Election of 11-7-78; election of 11-6-84; election of 11-6-90; election of 11-3-92; election of 11-8-94; election of 11-3-98; election of 11-4-08.)

Editor's note—See County Attorney Opinion dated 5/10/99 recognizing that authorized reimbursement for college tuition, training and/or education costs made to County employees do not violate the Charter. See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations. See County Attorney Opinion dated 6/9/98 addressing the creation of Department of Liquor Control by State law and the department's funding and expenditures. See County Attorney Opinion dated 5/8/98 explaining that State law created the Department of Liquor Control and gives the Council oversight over the department, but does not give the Council budget or appropriation authority. See County Attorney Opinion dated 1/26/98 analyzing a petition to amend charter to require any increase in taxes to be approved by referendum. See County Attorney Opinion dated 7/14/94 explaining that the Education Article allows Council to place restrictions on tuition and fees by the Board of Trustees of Montgomery College, and that a proposed amendment to Charter § 305 re approval of budget, appropriation of funds, and levying taxes does not appear to conflict with State law. See County Attorney Opinion dated 9/3/92 explaining flaws in § 305 based on a misleading petition and an amendment that conflicts with State law. See County Attorney Opinion dated 10/30/91-A describing the additions to Charter § 305 by Question F as not conflicting with the TRIM amendment.

Sec. 306. Item Veto or Reduction.

Upon approval of the budget, it shall be delivered within three days to the County Executive who within ten days thereafter may disapprove or reduce any item contained in it. If the County Executive disapproves or reduces any item in the budget, it shall be returned to the Council with the reasons for the disapproval or reduction in writing. The Council may, not later than June 30 of that year, reapprove any item over the disapproval or reduction of the County Executive by the affirmative vote of six members, except that the affirmative vote of five members shall be required in the case of the budgets of the Council, the Fire and Rescue Commission, the Fire Departments and Rescue Squads, the Housing Opportunities Commission and Montgomery College. (Election of 11-4-80; election of 11-2-82; election of 11-4-86; election of 11-8-88; election of 11-3-92.)

Editor's note—See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations.

Sec. 307. Supplemental Appropriations.

Any supplemental appropriation shall be recommended by the County Executive, who shall specify the source of funds to finance it. The Council shall hold a public hearing on each proposed supplemental appropriation after at least one week's notice. A supplemental appropriation that would comply with, avail the County of, or put into effect a grant or a federal, state, or county law or regulation, or one that is approved after January 1 of any fiscal year, requires an affirmative vote of five

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Councilmembers. A supplemental appropriation for any other purpose that is approved before January 1 of any fiscal year requires an affirmative vote of six Councilmembers. The Council may, in a single action, approve more than one supplemental appropriation. The Executive may disapprove or reduce a supplemental appropriation, and the Council may reapprove the appropriation, as if it were an item in the annual budget. (Election of 11-7-2000.)

Editor's note—See County Attorney Opinion dated 4/7/99-A clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations.

Sec. 308. Special Appropriations.

A special appropriation is an appropriation which states that it is necessary to meet an unforeseen disaster or other emergency, or to act without delay in the public interest. Each special appropriation shall be approved by not less than six Councilmembers. The Council may approve a special appropriation at any time after public notice by news release. Each special appropriation shall specify the source of funds to finance it. (Election of 11-4-86; election of 11-7-2000.)

Editor's note—See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations.

Sec. 309. Transfer of Funds.

The County Executive may at any time transfer an unencumbered appropriation balance within a division or between divisions of the same department. Transfers between departments, boards or commissions, or to any new account, shall be made only by the County Council upon the recommendation of the County Executive. The total cumulative transfers from any one appropriation shall not exceed ten percent of the original appropriation. No transfer shall be made between the operating and capital budget appropriation.

Sec. 310. Surplus.

The County may accumulate earned surplus in any enterprise fund or unappropriated surplus in any other fund. With respect to the General Fund, any unappropriated surplus shall not exceed five percent of the General Fund revenue for the preceding fiscal year. An unappropriated surplus may be used to fund any supplemental or special appropriations. (Election of 11-7-2000.)

Editor's note—See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations.

Sec. 311. Limitations on Expenditures.

No expenditures of County funds shall be made or authorized in excess of the available unencumbered appropriations therefor.

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Editor's note—See County Attorney Opinion dated 5/3/00 clarifying that the County cannot enter into agreements until funds have been appropriated.

Editor's note—Former Sec. 311A, Limitations on Expenditures for Landfills in Residential Zones, adopted by the election of 11-7-08, was repealed by the election of 11-4-08. See East v. Gilchrist, 296 Md. 368, A.2d 285 (1983); holding section 311A cannot be given effect under circumstances involving an order of the secretary of health and mental hygiene and requirement of local funding under public general law.

Editor's note—Former Sec. 311B, Limitations on Expenditures, Contract, and Permits for Burying or Trenching Sewage Sludge in Residential Zones, adopted by the election of 11-4-80, was repealed by the election of 11-4-08.

Sec. 312. Indebtedness.

The County may incur debt. No indebtedness for a term of more than one year shall be incurred by the County to meet current operating expenses. All County indebtedness for a term in excess of one year shall become due not later than thirty years after the date of issuance. If at any time the Council shall have failed to appropriate and to make available sufficient funds to provide for the timely payment of the interest and principal then due upon all County indebtedness, it shall be the duty of the Director of Finance to pay, or to make available for payment, to the holders of such indebtedness from the first revenues thereafter received applicable to the general funds of the County, a sum equal to such interest and principal. (Election of 11-6-90.)

Editor's note—See County Attorney Opinion dated 10/23/91 explaining that a loan guarantee to a non-profit corporation is comparable to that of the County making a loan under Ch. 23B. A loan guarantee would not constitute either an operating expense or a capital expense, and could not exceed 1 year.

Sec. 313. Purchasing.

The Council shall prescribe by law a centralized system of purchasing and contracting for all goods and services used by the County. The centralized purchasing system shall be administered under the professional supervision of the Chief Administrative Officer subject to the direction of the County Executive.

Editor's note—See County Attorney Opinion dated 4/13/99 (4/15/99 on cover memo) analyzing the Chief Administrative Officer's authority to make a sole-source contract in excess of \$25,000 without obtaining consent of the director of procurement or the contract review committee. See County Attorney Opinion dated 9/23/91 explaining that State law does not prohibit the Department of Liquor Control from entering into contracts with private entities to operate the liquor stores.

Editor's note—Former Sec. 313A, Purchasing, Contracting for Goods, Services with C&P Telephone Company, adopted by the election of 11-2-82, was repealed by the election of 11-4-08. In Rowe, et al. v. The Chesapeake and Potomac Telephone Company of Maryland, et al., 65 Md. App. 527, 501 A.2d (1985), it was held that Charter section 313A could not be given effect because it conflicted with a state Public Service Commission Order.

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Sec. 314. Competitive Procurement.

The Council shall prescribe by law for competitive procurement for purchases by or contracts with the County in excess of an amount or amounts established by law. (Election of 11-4-80; election of 11-6-90.)

Editor's note—See County Attorney Opinion dated 11/12/97 indicating that the Charter permits the use of merit system employees for pilot programs and enterprise programs, but prohibits the use of contract employees for these programs. See County Attorney Opinion dated 9/23/91 explaining that State law does not prohibit the Department of Liquor Control from entering into contracts with private entities to operate the liquor stores.

Sec. 315. Audit.

The Council shall contract with, or otherwise employ, a certified public accountant to make annually an independent post audit of all financial records and actions of the County, its officials and employees. The complete report of the audit shall be presented to the Council and copies of it shall be made available to the public.

Editor's note—Res. No. 10-457, introduced and adopted on Nov. 1, 1983, adopted procedures for the selection of the independent auditor.

Sec. 316. Public Access to Fiscal Documents.

All fiscal documents required by this Charter shall be public records, and copies shall be made available to the public. Any estimates, reports, or justifications on which they are based shall be open to public inspection subject to reasonable regulations.

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ARTICLE 4. MERIT SYSTEM AND CONFLICTS OF INTEREST.

Sec. 401. Merit System.

The Council shall prescribe by law a merit system for all officers and employees of the County government except: (a) members of the Council, the County Executive, the Chief Administrative Officer, the County Attorney; (b) the heads of the departments, principal offices and agencies, as defined by law; (c) any officer holding any other position designated by law as a non-merit position; (d) one confidential aide for each member of the Council; (e) two senior professional staff members for the Council as a whole as the Council may designate from time to time; (f) three special assistants to the County Executive as the Executive may designate from time to time; (g) special legal counsel employed pursuant to this Charter; (h) members of boards and commissions; and (i) other officers authorized by law to serve in a quasi-judicial capacity.

Any law which creates a new department, principal office, or agency, or designates a position as a non-merit position, requires the affirmative vote of six Councilmembers for enactment. Any law which repeals the designation of a position as a non-merit position requires the affirmative vote of five Councilmembers for enactment.

Officers and employees subject to a collective bargaining agreement may be excluded from provisions of law governing the merit system only to the extent that the applicability of those provisions is made subject to collective bargaining by legislation enacted under Section 510, Section 510A, or Section 511 of this Charter.

The merit system shall provide the means to recruit, select, develop, and maintain an effective, nonpartisan, and responsive work force with personnel actions based on demonstrated merit and fitness. Salaries and wages of all classified employees in the merit system shall be determined pursuant to a uniform salary plan. The council shall establish by law a system of retirement pay.

The Council by law may exempt probationary employees, temporary employees, and term employees from some or all of the provisions of law governing the merit system, but the law shall require these employees to be recruited, selected and promoted on the basis of demonstrated merit and fitness. (Election of 11-4-80; election of 11-6-84; election of 11-8-94; election of 11-5-96; election of 11-3-98; election of 11-7-2000.)

Editor's note—Section 401 of the Montgomery County Charter was cited in Montgomery County, Maryland v. Jamsa, 153 Md. App. 346, 836 A. 2d 745 (2003) and interpreted in Anastasi v. Montgomery County, 123 Md. App. 472, 719 A.2d 980 (1998).

See County Attorney Opinion dated 11/26/01-A explaining that police sergeants are considered FLSA exempt, even though certain duty assignments may render them eligible for overtime pay. See County Attorney Opinion dated 5/10/99 recognizing that authorized reimbursement for college tuition, training and/or education costs made to County employees do not violate the Charter. See County Attorney Opinion dated 2/19/97 explaining that the County Executive has the authority to establish a separate salary schedule for non-merit

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heads of departments and principal offices within the Executive Branch. [attachment] See County Attorney Opinion dated 11/12/97 indicating that the Charter permits the use of merit system employees for pilot programs and enterprise programs, but prohibits the use of contract employees for these programs. See County Attorney Opinion No. 95.002 dated 5/17/95 explaining that a member of retirement plan who retires under the retirement incentive plan may participate in a County contract awarded under the procurement process. See County Attorney Opinion No. 90.007 dated 7/24/90 explaining that the County Council may amend the uniform salary plan only through legislation and not by resolution.

Sec. 402. Personnel Administration.

The County Executive shall be responsible for adopting personnel regulations for the administration and implementation of the merit system law. These regulations shall be adopted in the manner provided for by law. The Chief Administrative Officer, under the direction of the County Executive and subject to merit system laws and regulations, shall be responsible for administering the County's merit system. (Election of 11-4-80.)

Editor's note—See County Attorney Opinion dated 5/10/99 recognizing that authorized reimbursement for college tuition, training and/or education costs made to County employees do not violate the Charter. See County Attorney Opinion dated 4/13/99 (4/15/99 on cover memo) analyzing the Chief Administrative Officer's authority to make a sole-source contract in excess of \$25,000 without obtaining consent of the director of procurement or the contract review committee. See County Attorney Opinion dated 11/12/97 indicating that the Charter permits the use of merit system employees for pilot programs and enterprise programs, but prohibits the use of contract employees for these programs. See County Attorney Opinion No. 90.007 dated 7/24/90 explaining that the County Council may amend the uniform salary plan only through legislation and not by resolution.

Sec. 403. Merit System Protection Board.

There is established a Merit System Protection Board composed of three members who are qualified voters of the County appointed by the Council. One member shall be appointed each year for a term of three years. Any member appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed only for the remainder of that term. Appointment shall be made so that not more than two members of the Board shall be members of the same political party. No member shall hold political office or participate in any campaign for any political or public office during the member's term of office. Members of the Board shall be compensated as prescribed by law. (Election of 11-4-80.)

Editor's note—Section 403 of the Montgomery County Charter was cited in Montgomery County, Maryland v. Jamsa, 153 Md. App. 346, 836 A. 2d 745 (2003)

See County Attorney Opinion dated 7/8/02 describing the extent to which quasi-judicial officials may engage in political activities. See County Attorney Opinion dated 5/10/99 recognizing that authorized reimbursement for college tuition, training and/or education costs made to County employees do not violate the Charter.

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Sec. 404. Duties of the Merit System Protection Board.

Any employee under the merit system who is removed, demoted, or suspended shall have, as a matter of right, an opportunity for a hearing before the Merit System Protection Board, which may assign the matter to a hearing examiner to conduct a hearing and provide the Board with a report and recommendations. The charges against the employee shall be stated in writing, in such form as the Board shall require. If the Board assigns the matter to a hearing examiner, any party to the proceeding shall have, as a matter of right, an opportunity to present an oral argument on the record before the Board prior to a final decision. The Board shall establish procedures consistent with law for the conduct of its hearings. The decisions of the Board in such appeals shall not be subject to review except by a court of competent jurisdiction. The Council shall provide by law for the investigation and resolution of formal grievances filed under the merit system and any additional duties or responsibilities of the Board. The Board shall conduct on a periodic basis special studies and audits of the administration of the merit and retirement pay systems and file written reports of its findings and recommendations with the Executive and the Council. The Board shall comment on any proposed changes in the merit system law or regulations in a timely manner as provided by law. (Election of 11-4-80.)

Editor's note—Section 404 of the Montgomery County Charter was cited in Montgomery County, Maryland v. Jamsa, 153 Md. App. 346, 836 A. 2d 745 (2003)

See County Attorney Opinion dated 5/10/99 recognizing that authorized reimbursement for college tuition, training and/or education costs made to County employees do not violate the Charter.

Sec. 405. Political Activity.

No officer or employee of the County shall be prohibited from participating in politics or political campaigns; however, the Council may by law restrict political activities by County officers and employees (including members of boards and commissions) who serve in a quasi-judicial capacity. No County officer or employee shall be obligated to contribute to a political campaign or to render political service. (Election of 11-2-82; election of 11-3-98.)

Editor's note—See County Attorney Opinion dated 7/8/02 describing the extent to which quasi-judicial officials may engage in political activities. See Attorney General Opinion No. 98-003 (unpublished) dated 1/27/98 explaining that the State election laws preempt the County from regulating the solicitation of political contributions. See County Attorney Opinion dated 12/10/97 explaining that the County may prohibit members of its quasi-judicial boards and commissions from soliciting funds for partisan political campaigns or restricting other political activities that conflict with a compelling County interest.

Sec. 406. Prohibition Against Private Use of Public Employees.

No member of the Council, the County Executive, or any officer or employee of the County shall detail or cause any officer or employee of the County to do or perform any service or work outside of the officer's or employee's public office or employment. (Election of 11-2-82.)

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Editor's note—See County Attorney Opinion dated 8/11/00 indicating that an elected official running for office must devote “official” time to official duties.

Sec. 407. Prohibition Against Additional Compensation.

No member of the Council and no officer or employee of the County whose salary is fixed, in whole or in part, by this Charter, the laws of the County, or its personnel regulations, shall be entitled, directly or indirectly, to any other salary, expenses, or compensation from the County for performance of public duties except expenses for travel and subsistence incident to the performance of official duties as prescribed by law. (Election of 11-2-82.)

Editor's note—See County Attorney Opinion dated 5/10/99 recognizing that authorized reimbursement for college tuition, training and/or education costs made to County employees do not violate the Charter. See County Attorney Opinion No. 90.002 dated 3/30/90 explaining that a County employee may receive two paychecks (one as a full-time County employee and one as a paid member of a committee) within certain parameters.

Sec. 408. Work During Official Hours.

All officers and employees of the Executive or Legislative Branches who receive compensation paid in whole or in part from County funds shall devote their entire time during their official working hours to the performance of their official duties.

Editor's note—See County Attorney Opinion dated 8/11/00 indicating that an elected official running for office must devote “official” time to official duties.

Sec. 409. Corrupt Practices.

No person whose salary or expenses are paid in whole or in part from County funds shall invite, accept, offer, give or promise to give any money or any valuable thing in consideration of appointment or employment by the County. Any person violating this Section shall be removed from any public office or employment held and be subject to such other penalties as may be prescribed by law. (Election of 11-2-82.)

Sec. 410. Code of Ethics.

The Council shall adopt by law a code of ethics applicable to all public employees. In this section, public employee includes each County employee, elected officer, and appointed officer, including a member of a board or commission, and any other person designated by law.

The code of ethics shall at a minimum regulate: (a) conflicts of interest; (b) solicitation and receipt of gifts; (c) other employment of present and former public employees; (d) lobbying; (e) financial disclosure by public employees; (f) the use of County property and County insignia; and (g) the use of the prestige of office.

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The code of ethics shall:

- a) provide that each public employee owes a fiduciary responsibility to the County, which the public employee shall not breach by any public or private action;
- b) prohibit a public employee from obtaining an economic benefit as a result of public employment if the economic benefit is received on terms more favorable than those available to persons who are not public employees;
- c) allow waivers from restrictions and requirements of the code if a waiver is in the best interest of the County and all pertinent facts are disclosed to the public;
- d) authorize enforcement of the code and impose penalties for violations; and
- e) include any other provisions required by State law or that the Council finds serve the purposes of this section.

The Council by law shall prohibit corrupt practices by any individual or organization that attempts to obtain or is a party to a contract with the County, including kickbacks in the award of County contracts and using confidential information obtained in performing a contract with the County for personal gain or the gain of another without the approval of the County.

The Council may by law establish a commission to enforce and interpret the code of ethics and related laws. The Council by law may allow an ethics commission to retain legal counsel with the approval of the Council, subject to appropriation, and may exempt legal counsel for the commission from Section 213. (Election of 11-2-82; election of 11-5-96.)

Editor's note—See County Attorney Opinion dated 8/23/02 describing the elements required for a complaint to the Ethics Commission to initiate an investigation. See County Attorney Opinion dated 9/8/98 explaining that County law limiting contractors from seeking or obtaining an economic benefit in addition to payment does not extend to sub-contractors unless the Office of Procurement requires its contractors to extend the prohibition to sub-contractors.

Sec. 411. Reserved.

Editor's note—Section 411, related to prohibited activities and derived from Char. Res. No. 8-935, § 3 as amended by an election of 11-2-82, was repealed by an amendment of 11-5-96.

ARTICLE 5. GENERAL PROVISIONS.

Sec. 501. Disaster—Continuity of Government During Emergencies.

In order to ensure continuity of government during an emergency caused by a disaster or enemy attack, the Council shall prescribe by law for the temporary suspension of specific provisions of this Charter and for temporary succession to the powers and duties of public offices whether filled by election or appointment.

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Sec. 502. Annual Report.

The County Executive shall prepare and provide to the Council and the public, within sixty days after the end of each fiscal year, an annual report setting forth the activities and accomplishments of the County Government.

Sec. 503. Annual Compilation of Laws.

As soon as practicable each year, the County Attorney shall have published a compilation or a cumulative supplement to the County Code, with index, which shall include all legislation and regulations of a general or permanent nature adopted or approved by the Council or County Executive during the preceding year. (Election of 11-6-90.)

Sec. 504. County Code.

Unless the Council shall provide for more frequent publication by law, each ten years there shall be compiled under the direction of the County Attorney an annotated code of all public local laws, County legislation, and regulations then having the force and effect of law, and this Charter. The Council may, by legislation, legalize this code and shall cause it to be published in an indexed volume. (Char. Res. No. 7-711; election of 11-6-90.)

Sec. 505. Right to Information.

Any person shall have the right to inspect any document held by County government, except confidential police records, personnel records, records of a confidential nature as defined by law, or records that are or may be exempted from disclosure under the state Public Information Act or other applicable state or federal law. The Council may adopt reasonable regulations for such inspection. A certified copy of any such document shall be furnished upon payment of a reasonable fee established by such regulations. This section shall not apply to a document or other material obtained or prepared in anticipation of litigation or for use in legal proceedings to which the County is a party. (Election of 11-5-02.)

Editor's note—Former Section 505 of the Montgomery County Charter was quoted and interpreted in Caffrey v. Montgomery County, 370 Md. 272, 805 A.2d 268 (2002), where it was held that former Section 505 waived executive privilege and attorney-client privilege in relation to public information requests. At the 2002 general election, the voters approved an amendment to Montgomery County Charter Section 505 making the section consistent with State public information protections.

See County Attorney Opinion dated 7/14/00 discussing the need to modernize the Charter in relation to access to documents. See County Attorney Opinion dated 6/19/00 recommending an amendment to the Charter to conform with State law.

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Sec. 506. Separability.

If any article, section, or provision of this Charter shall be held unconstitutional, invalid, or inapplicable to any person or circumstance by the final decision of a court of competent jurisdiction, all other articles, sections, or provisions of this Charter and their application to all other persons and circumstances shall be separable and shall not be affected by such decision.

Editor's note—Charter amendment that conflicts with public general law may not be submitted to votes for approval. Montgomery County v. Bd. of Supervisors of Elections 311 Md. 512, 536 A.2d 641 (1988).

Sec. 507. Amendment.

This Charter may be amended in the manner provided in Section 5 of Article XI-A of the Constitution of Maryland.

Sec. 508. Effective Date.

This amended Charter shall become effective from and after the thirtieth day after its adoption.

Sec. 509. Charter Review Commission.

There shall be a Charter Review Commission appointed by the County Council every four years, within six months after the Council assumes office, for the purpose of studying the Charter. The Commission shall be composed of eleven members who shall be residents of the County, five of whom shall be appointed from a list of names submitted by the County Executive. Not more than six members shall be of the same political party. The chairperson shall be designated by the Council and the vice-chairperson shall be designated by the County Executive. The Commission shall report at least once to the Council on the Commission's activities within one year after appointment of the Commission. Commission reports shall be submitted not later than May 1 of every even-numbered year. The reports shall contain recommendations concerning proposed Charter amendments, if any. (Char. Res. No. 8-935, § 1.)

Sec. 510. Collective Bargaining.

The Montgomery County Council shall provide by law for collective bargaining with binding arbitration with an authorized representative of the Montgomery County police officers. Any law so enacted shall prohibit strikes or work stoppages by police officers. (Election of 11-4-80.)

Editor's note—Charter Sec. 510 is cited in Mayor and City Council for Ocean City v. Bunting 168 Md. App. 134, 895 A.2d 1068 (2006).

See County Attorney Opinion dated 7/22/98 commenting on the means of requiring binding dispute resolution process.

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Sec. 510A. Collective Bargaining—Fire Fighters.

The Montgomery County Council shall provide by law for collective bargaining with binding arbitration with an authorized representative of the Montgomery County career fire fighters. Any law so enacted shall prohibit strikes or work stoppages by career fire fighters. (Election of 11-8-94.)

Editor's note—See County Attorney Opinion dated 7/22/98 commenting on the means of requiring binding dispute resolution process.

Sec. 511. Collective Bargaining—County Employees.

The Montgomery County Council may provide by law for collective bargaining, with arbitration or other impasse resolution procedures, with authorized representatives of officers and employees of the County Government not covered by either Section 510 or Section 510A of this Charter. Any law so enacted shall prohibit strikes or work stoppages for such officers and employees. (Election of 11-6-84; election of 11-8-94.)

Editor's note—See County Attorney Opinion dated 7/22/98 commenting on the means of requiring binding dispute resolution process.

Sec. 512. Hearing Examiners.

Hearing examiners authorized by law to conduct hearings and render written reports and recommendations may preside over matters referred to them at the request of executive branch agencies, the Merit System Protection Board, and the County Board of Appeals under procedures provided by law, in addition to any matters assigned to them by the Council in the exercise of its powers as provided by law. (Election of 11-4-86.)

Sec. 513. Effect of Certain Amendments.

The taking effect of this Charter, or any amendment to this Charter, shall not of itself affect the tenure, term, status, or compensation of any appointed officer or employee of the county then holding office, except as directly provided in this Charter. Any amendment to this Charter that increases or decreases the number of members of the county council, or alters the provisions for election of the members of the council, shall initially apply to the members of the council elected at the next election after the adoption of the Charter amendment. (Election of 11-4-86; election of 11-3-98.)

Editor's note—Charter amendments approved at the election held on November 3, 1998, repealed the heading ("Schedule of Transitional Provisions"), subheadings ("General" and "Merit System"), and opening paragraph of "Schedule of Transitional Provisions"; renumbered section 1 under "General" to section 513; and repealed section 2 under "Merit System." Section 3 was repealed by Charter amendment approved at the election held on November 6, 1990. Previously, Charter amendments approved at the election held on November 2, 1982, revised "Schedule of Transition Provisions" by repealing former sections 2—16 and enacting new sections 2 (formerly section 16) and 3 (formerly section 17).

A STRONGER OFFICE OF INSPECTOR GENERAL

A Minority Report
by
Judith Vandegriff and Charles Wolff

Although the Final Report of this Charter Review Commission recommends no change affecting the County's Office of Inspector General (the Office), we urge the next Commission to study the issue more broadly.

The Office needs independence, adequate staff and budget, and subpoena power to compel cooperation when voluntary approaches have failed. Serious difficulties in getting information about actions of county employees or contractors are mentioned in the annual report of the Office (January 2010). They were later described in the *Washington Post*, March 17, 2010 and the *Montgomery County Gazette*, March 19, 2010.

We have consulted with Dr. Fred Palm, Executive Director of the National Association of Inspectors General and with two IG offices (New Orleans and Miami Dade). They mention four topics of nationwide relevance:

1. Independence

Even though the Inspector General is hired by the executive and/or legislative branches, the Office needs to be independent of both. The Inspector General should be removable only for just "cause". The Office should not participate in the bonus process.

2. Resources

The Office should receive an annual budget from general funds. Its budget should not be bundled with other agency requests but through a separate request. The size of its staff should be adequate for the task.

3. Authority

The Office should have a broad and clearly defined scope of authority to investigate fraud, waste and abuse. It should have subpoena power to obtain information.

4. Publication

The Inspector General should report all findings to the public in a timely manner.

Our Commission was originally asked whether the Office should be transferred from the legislative branch to the executive branch. We eventually voted to leave the Office under the County Council. Less attention was paid to other aspects bearing on the effectiveness of the Office. We hope the next Charter Review Commission will study the larger issues. For example, they might recommend a Charter amendment to guarantee subpoena power for the Office and a budget that is a fixed percentage of County expenditures.

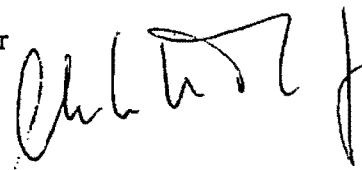
**Office of the County Attorney
Montgomery County, Maryland**


MEMORANDUM

Opinion No. 97 - 1
Date: June 27, 1997

TO: Douglas M. Duncan
County Executive

Bruce Romer
Chief Administrative Officer

VIA: Charles W. Thompson, Jr. 
County Attorney

FROM: Marc P. Hansen, Chief 
Division of General Counsel

RE: Bill 38-96, Inspector General — Establishment; Legal Review

QUESTION PRESENTED

You have asked the Office of the County Attorney to conduct a legal review of Bill 38-96, Inspector General — Establishment. Bill 38-96 establishes an Office of Inspector General as a principal office in the Executive Branch of the County government. The purpose of the Inspector General is to review the effectiveness and efficiency of operations of the County government and certain independent County agencies. The Inspector General is also charged with the responsibility of preventing and detecting fraud, waste and abuse of government activities. In order to accomplish these purposes, the Inspector General is granted an extraordinary level of independence not given other department heads in the Executive Branch. This independence raises the question of whether Bill 38-96 is consistent with the Montgomery County Charter.

SHORT ANSWER

Although providing the Inspector General with independence is important in advancing the purpose for which the Inspector General is created, Bill 38-96 offends the County Charter because the Charter does not permit the Council to assume executive functions or make

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the head of a principal office in the Executive Branch of government independent from the supervision of the County Executive and Chief Administrative Officer.

ANALYSIS

I. THE INSPECTOR GENERAL LEGISLATION.

Bill 38-96 makes the Inspector General a principal office in the Executive Branch of County government. As already noted, the purpose of the Inspector General is to review the effectiveness and efficiency of the programs and operations of the County government and certain independent County agencies.¹ The Inspector General is also charged with the responsibility of identifying fraud, waste and abuse in government activities and proposing ways to increase accountability of County departments.

Bill 38-96 provides that the Inspector General serves for a four-year term.² In the event the position of Inspector General is vacant, the senior professional staff member in the Office serves as the Acting Inspector General until the new Inspector General is appointed by the County Executive and confirmed by the County Council.

The Executive may only remove the Inspector General for good cause and then only with the concurrence of the Council. The Inspector General directs the activities of the office

¹The independent County agencies are the Board of Education, the Planning Commission, WSSC, Montgomery College, the Housing Opportunities Commission, and the Revenue Authority. Section 2-64A(l) requires these independent County agencies to provide documents and information to the Inspector General. Subject to certain narrow exceptions, we question the authority of the County government to require agencies created by State law to provide the Inspector General with information absent State law authorizing the County to make these demands.

²Section 2-64A(c) provides that the term of the Inspector General begins "on July 1 of the second year after an Executive and Council are elected." Applied literally, this means that an Inspector General may not begin his or her term until July 1, 2000. At the same time, Bill 38-96 provides for a sunset date of June 30, 2000. Moreover, Bill 38-96 does not contemplate appointment of an Inspector General outside of the four-year cycle except when "the Inspector General resigns, dies, or is removed from office."

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through adoption of a four-year work plan. The Inspector General must consider recommendations for the work plan from the Executive, Council and others, but has final authority regarding the contents of the work plan.

The legislative history of Bill 38-96 demonstrates a clear Council intent to grant the Inspector General independence from the Executive so that the Inspector General will be able to conduct investigations and make recommendations without fear of dismissal and free from political control. By way of contrast, Council retains considerable control over the Inspector General's work program through the Council's control of the Office of Legislative Oversight's work program--Bill 38-96 provides that the Inspector General ensure that the Inspector General's work plan does not duplicate the work plan of the Office of Legislative Oversight-- and through Council's budget approval authority over the Office of the Inspector General.

II. THE MONTGOMERY COUNTY CHARTER.

Charter §101 (County Council) vests all legislative powers of the County government in the County Council. Charter §201 (Executive Powers), however, vests all executive power of the County government in the County Executive. Consistent with this separation of powers, Charter §117 (Limitations) prohibits the Council from appointing, dismissing or giving directions to an employee of the Executive Branch of the County government. Charter §211 (Duties of the Chief Administrative Officer) provides that the Chief Administrative Officer "subject to the direction of the County Executive, [shall] supervise all departments, offices, and agencies of the Executive Branch." Charter §215 (Appointments) provides, "The County Executive, after receiving the advice of the Chief Administrative Officer, shall appoint a single officer to head each department, principal office or agency of the Executive Branch."

The 1968 Commentary on the County Charter notes, "Consistent with §201 of the proposed charter under which all executive authority is given to the County Executive, this section [Charter §117] specifically prohibits the Council or any individual members of the Council from exercising executive authority." Thus, §117 prohibits Council involvement in the dismissal process of a member of the Executive Branch unless that power is given elsewhere in the Charter.³ The Commentary goes on to note with respect to Charter §201 that "It is intended .

³Charter §§210, 213, and 215 limit the Council's role in the hiring and dismissal of members of the Executive Branch to the confirmation of non-merit, Executive appointments.

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... to confer all executive power of the County government upon the Executive and it is contemplated that the County Executive's authority at the County level would be comparable to the executive power of the President at the Federal level and the Governor at the State level." With respect to Charter §215, the Commentary states, "The purpose of this provision is to insure that the County Executive will head the entire Executive Branch of the government and to prevent a division of executive authority between the Council and the County Executive."

As early as 1971, the Court of Appeals agreed with an opinion of the then County Attorney that §§101 and 201 of the Montgomery County Charter separates legislative and executive powers within the County government. *Eggert v. Gleason*, 263 Md. 243, 282 A.2d 474 (1971) (Decision to implement construction project is an executive function). In *Eggert*, the Court of Appeals reaffirmed its test for determining whether an action is executive or legislative as follows:

A recognized test for determining whether . . . it is executive or administrative . . . is whether the ordinance is one making a new law — an enactment of general application prescribing a new plan or policy — or is one which merely looks to *or facilitates the administration, execution or implementation of a law already in force and effect*. (Emphasis in original.) *Id.* at 259.

In 1972, the County Attorney construed Charter §215 as preventing the Council from restricting the power of the County Executive to appoint individuals to positions covered under Charter §215.⁴ In 1976, Mr. McKernon issued Opinion No. 76.056, reviewing Bill No. 43-76. That legislation proposed to give the Human Relations Commission exclusive authority over the Office of the Human Relations Commission. The legislation also proposed to make the Human Relations Commission a principal office under Charter §212. After noting that the Charter requires that a **single** officer head a principal office, Mr. McKernon noted that the heads of principal offices are exempt from the Merit System under Charter §401 and concluded, "Thus, the head of a department would serve *at the pleasure of the County Executive*. To allow the Commission, in effect, to function as a principal department head would usurp the effective appointive authority vested in the County Executive." (Emphasis supplied.) In 1985, the Office

⁴Memorandum from Richard S. McKernon, County Attorney, to Nan Furioso, Interim Executive Director, Montgomery County Commission for Women, dated November 8, 1972.

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of the County Attorney issued Opinion No. 85.011 concluding that Bill No. 59-85 violated the separation of powers doctrine by requiring County Council approval of all Fire and Rescue Commission's actions except administrative and ministerial acts. These County Attorney opinions are important because a court will normally give great deference to a contemporaneous interpretation of a law by an agency charged with its administration-- the county Attorney is the chief legal officer of the County under Charter §213-- especially when the interpretation has been applied consistently over a long period of time. *Baltimore Gas & Electric Company v. Public Service Commission of Maryland*, 305 Md. 145, 501 A.2d 1307 (1986).

III. COURT DECISIONS.

Article II, Section 10 of the Maryland Constitution expressly grants significant control over the appointment process to the General Assembly. See, *Commission on Medical Discipline of the State of Maryland v. Stillman*, 291 Md. 390, 435 A.2d 747 (1981). Accordingly, cases construing the Governor's appointment authority provide little guidance in interpreting the County Charter.

The Court of Appeals has discussed the separation of legislative and executive powers at the local level. See, *Eggert v. Gleason*, 263 Md. 243. Of the many cases upholding the separation of powers in counties governed by a charter like Montgomery County's, the only case that, on first blush, appears to provide some support for Bill 38-96 is *County Executive of Prince George's County v. Doe*, 291 Md. 676, 436 A.2d 459 (1981). In *Doe*, the Court of Appeals invalidated an order of County Executive Larry Hogan banning abortions in Prince George's County hospitals unless necessary to save the life of the mother. The Court of Appeals noted that while the Prince George's County Charter required the Executive to direct, supervise and control the implementation of County law, the Charter gave the Council the authority to define the duties and functions of executive agencies. The court concluded that the Charter did not give the Executive "unbridled authority permitting him to usurp, nullify or supersede, at his pleasure, functions and duties committed by law to other executive branch offices, or to refuse to observe existing laws enacted by the Council." The situation in *Doe*, however, is significantly different from that presented in Bill 38-96. In *Doe*, the County Executive, without consulting with other bodies created by law to address the issue, instituted a significant new policy -- banning abortions. Bill 38-96 presents the opposite extreme by placing the head of an executive department outside the supervisory control of the Executive.

Although there are no Maryland cases directly on point, the U.S. Supreme Court has addressed the issue of legislative control over executive appointment powers under the U.S.

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Constitution, which in this regard is more similar to the County Charter than the Maryland Constitution.

In *Myers v. United States*, 272 U.S. 52 (1926), the Supreme Court, in an opinion covering some 250 pages, discussed the interplay between the doctrine of separation of powers and the President's authority to "with the advice and consent of the Senate . . . appoint officers of the United States."⁵ In *Myers*, the Supreme Court struck down a Congressional act which required the President to obtain the consent of the Senate before removing a postmaster. The Court concluded:

The power to remove inferior executive officers, like that to remove superior executive officers, in [sic] an incident of the power to appoint them, and is in its nature an executive power. The authority of Congress given by the excepting clause to vest the appointment of such inferior officers in the heads of departments carries with it authority incidentally to invest the heads of departments with power to remove. It has been the practice of Congress to do so and this court has recognized that power. The court also has recognized in the Perkins Case that Congress, in committing the appointment of such inferior officers to the heads of departments, may prescribe incidental regulations controlling and restricting the latter in the exercise of the power of removal. But the court never has held, nor reasonably could hold, although it is argued to the contrary on behalf of the appellant, that the excepting clause enables Congress to draw to itself, or to either branch of it, the power to remove **or the right to participate in the exercise of that power**. To do this would be to go beyond the words and implications of that clause, and to infringe the constitutional principle of the separation of governmental powers. *Id.* at 161. (Emphasis supplied.)

Nine years later, the Supreme Court clarified that *Myers* applied only to officers exercising executive functions. *Humphreys Ex'r v. United States*, 295 U.S. 602 (1935). In

⁵Article II, Section 2, U.S. Constitution.

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Humphreys, the Court concluded that Congress could involve itself in the removal of Federal Trade Commissioners because they exercised quasi-legislative powers (requirement to make investigations and reports to Congress) and quasi-judicial powers (authority to act as a master in chancery). Of course, it may be argued that the Inspector General primarily performs the quasi-legislative function of issuing investigative reports. To the extent this argument is adopted, however, it leads to the conclusion that the Inspector General should be a part of the Legislative Branch of government, not the head of a principal office in the Executive Branch.

In *Bowsher v. Synar*, 478 U.S. 714 (1986), the Supreme Court invalidated the Gramm-Rudman Balanced Budget and Emergency Deficit Control Act of 1985. The Gramm-Rudman Act mandated budget cuts to reach targeted deficit reduction levels. Under the Gramm-Rudman Act, the Comptroller General of the United States was authorized to specify budget cuts in a report to the President, and the President was required to follow those cuts. The constitutional defect, according to the Supreme Court, was that the Comptroller General was removable only by Congress. The Supreme Court reasoned that this amounted to a congressional intrusion into the functions of the President. The Court held that "[t]o permit an officer controlled by Congress to execute the laws would be, in essence, to permit a congressional veto This kind of congressional control over the execution of the laws . . . is constitutionally impermissible." *Id.* at 726-727. The Court went on to state that "once Congress makes its choice in enacting legislation, its participation ends. Congress can thereafter control the execution of the enactment only indirectly — by passing new legislation." *Id.* at 733-734.

IV. APPLICATION OF THE LAW TO BILL 38-96.

Bill 38-96 invests an Executive Branch department head with an extraordinary level of independence. The Inspector General may adopt a work plan free from the direction of either the Chief Administrative Officer or the County Executive. Coupled with this authority Bill 38-96 prevents the Executive from removing the Inspector General except for cause and then only with the consent of the Council. In our view, these provisions run afoul of several Charter provisions. Bill 38-96 violates Charter §117 because it involves the Council in the dismissal of an employee of the Executive Branch of the County government. Charter §211 is violated because the Chief Administrative Officer is deprived of the responsibility of supervising an office of the Executive Branch of government.⁶ Finally, Bill 38-96 violates Charter §215 which

⁶Webster's New World Dictionary of the American Language, College Edition (1962) defines supervise as "to oversee or direct" the work of others.

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authorizes the Executive, after receiving the advice of the Chief Administrative Officer, to appoint a single officer to head each principal office of the Executive Branch. As already discussed, Chapter §215 has historically been seen as empowering the Executive to replace an incumbent department head with a new appointee without having to meet a burden of showing good cause for the Executive's decision.

The provision in the Inspector General legislation providing that the senior professional staff member in the Office of the Inspector General serves as the Acting Inspector General until a new Inspector General is appointed and confirmed further exacerbates the legislation's conflict with Charter §215. This provision, in effect, requires the County Executive to accept as a department head a specific individual for an indeterminate period of time should Council refuse to confirm the Executive's appointment.⁷

V. ARGUMENTS IN FAVOR OF BILL 38-98.

Legislative counsel defends the Inspector General legislation as being consistent with the Charter. Legislative counsel points to Charter §210, which provides that the Chief Administrative Officer must be a professionally qualified administrator who serves "at the pleasure of the County Executive." Likewise, legislative counsel points to Charter §213, which provides that the County Attorney serves "at the pleasure of the County Executive" but, upon request, is entitled to a public hearing before the Council prior to dismissal from office. Legislative counsel argues that since Charter §215, which provides for Executive appointment of all department heads, does not contain the phrase "at the pleasure of", the Charter intended to allow the Council, by law, to regulate the removal of department heads.

This argument is flawed for two reasons:

1. To prevent the Executive from removing department heads effectively shifts control over the Executive Branch to department heads who are answerable to the Council. In the case of requiring Council approval of a removal, this

⁷Additionally, the legislation provides that the Inspector General ensure that the Inspector General's work not duplicate the work of the Office of Legislative Oversight. In doing so, Bill 38-96 undermines the independence of the Inspector General from the Council. Through this provision, the Inspector General is left only those topics to study that the Council does not assign to the Office of Legislative Oversight.

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inserts the Council into the supervisory responsibilities given the Chief Administrative Officer and the County Executive over the Executive Branch. This result is contrary to the intent of Charter §§117 and 211.

2. The function of the phrase "at the pleasure of" in Charter §§210 and 213 is to clarify that the Executive may remove these officers at will, not to limit the Executive's appointment authority under Charter §215. Charter §210 provides that the Chief Administrative Officer should be a "professionally qualified administrator." This is the type of language one normally associates with a Merit System position. For example, Charter §401 provides that the Merit System "shall provide the means to . . . select . . . and maintain an effective . . . work force with personnel actions based on demonstrated merit and fitness." Adding the phrase "at the pleasure of" to Charter §210 was done to clarify that the Chief Administrative Officer was not to be given merit system protection--i.e. removal only upon a showing of cause. Similarly, in Charter §213 the County Attorney is entitled to a public hearing before the Council prior to dismissal from office. The right to a hearing is normally associated with a situation in which an officer may only be removed for cause. Adding the phrase "at the pleasure of" to Charter §213 makes it clear that the County Attorney may be removed by the Executive without cause.

Legislative counsel also argues that many members of boards and commissions may be removed only for cause. Specifically, legislative counsel points to the Ethics law which requires Council concurrence in the removal of an Ethics Commissioner for cause. This argument is significant because Charter §215, which provides that the Executive appoint department heads, also provides that the Executive appoint, subject to Council confirmation, members of boards and commissions.

We believe this argument is also flawed. Boards and commissions are not principal departments in the Executive Branch of government. Without deciding whether the removal provision in the Ethics law violates the Charter, we point out that the Ethics Commission, unlike the Inspector General, carries out significant quasi-judicial functions. We believe deciding specific cases in a trial-type proceeding is a significantly different function than administering a principal department in the Executive Branch of government. *See, Humphrey's Ex'r v. United States*, 295 U.S. 602.

VI. CONCLUSION.

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There is not a "bright line" test which can be applied in determining whether legislation violates the separation of powers doctrine established in the County Charter. In the case of Bill 38-96, we believe the combination of the provisions providing for removal for cause, requiring Council approval of removal, authorizing the Inspector General to establish his or her own work plan, and designating a senior professional staff member to act as Acting Inspector General until a new Inspector General is approved and confirmed, crosses over the line separating the Council's functions from the Executive's functions. Accordingly, we conclude that the County Charter conflicts with Bill 38-96.

We readily acknowledge the legitimacy of the functions of an Inspector General as envisioned in Bill 38-96 and the importance independence of the Inspector General plays in accomplishing those purposes. We conclude, nevertheless, that the means by which the Council has chosen to achieve the purposes laid out in Bill 38-96 violate the Charter. Other means, however, to achieve those ends are available to the Council. Certainly, the Council could propose an amendment to the County Charter to create an independent Office of the Inspector General. In the alternative, the Council could place the Inspector General's function in the Legislative Branch of government.

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Statement of Thomas J. Dagley
Inspector General
Montgomery County Council

To The

Charter Review Commission
February 13, 2008

Introduction

I appreciate the opportunity to meet with you. Through Council staff, you asked me to address the following:

- How has the OIG contributed to the welfare of the County?
- What are the advantages/disadvantages of the current selection process?
- What are the advantages/disadvantages of an Executive-nominated, Council-confirmed Inspector General?

I think it is important to share with you that I am not clear as to the underlying reason(s) regarding a possible change in the County's inspector general selection process. Recognizing that the Council, Executive, and taxpayers want an OIG that serves as an independent force for promoting integrity and efficiency while combating fraud, waste, abuse, and mismanagement in all Council-funded programs and activities, my experience over the past three years and the OIG's performance results suggest the current model is the best option to address these challenges and move forward. As other options are considered, I want to learn more about the expectations of County leaders for the OIG and contribute to a framework that strengthens the County's system of management and controls used to ensure: accountability for leadership actions; fiscal accountability; independence in internal and external audits; and transparency of operations.

As an ambassador and member of the Board of Examiners for the Baldrige National Quality Program for the past several years, I have relied on a systems perspective to establish a Montgomery County OIG capable of effectively assessing risk and overseeing audits and investigations needed for County programs that in fiscal year 2008 exceeded \$4 billion in operating expenses and generated a multi-billion dollar capital improvements program budget.

County leadership's recent decision to begin use of the Baldrige Criteria for Performance Excellence to improve results is an opportunity for the Executive, Council, and Inspector General to rely on the independence of the IG to foster new initiatives to improve integrity, accountability, and excellence in all County programs as a means to reduce or eliminate problems. Three years ago, when I competed for the inspector general position before a Council panel co-chaired by two federal inspectors general (both Montgomery County residents), it was the independence of the inspector general and a focus on new initiatives to move the OIG forward that received priority attention. Not surprisingly, these are the key factors that have helped the OIG make significant contributions to the

welfare of County over the past three years. The performance results I discuss briefly with you this morning cut across the Executive Branch, Council, and independent Council-funded agencies, including Montgomery County Public Schools, Montgomery College, the Planning Board, and the Washington Suburban Sanitary Commission.

With this background information in place, I will use a prepared statement to address your specific questions. A copy has been provided to you and will be available to other interested parties at the OIG's website (<http://www.montgomerycountymd.gov/ig>).

How has the Office of Inspector General contributed to the welfare of the County?
Let's look at some examples of recent OIG accomplishments that have been highlighted in a recent OIG Bulletin and annual reports.

Funds recovered or put to different use - \$17.1 million

Seven Locks Elementary School - \$14.1 million in capital funding allocated by the Council in May 2004 for a new school was withdrawn by the Council in May 2006 and put to a different use (February 2006 audit report).

MCG Overtime Compensation – the FRS FY 2008 overtime budget recommended by the Executive in March 2007 was reduced by \$3 million by the Council in May 2007 (April 2007 audit report).

Questioned Costs or Potential Savings - \$11.3 million

Worker's Compensation - \$182,000 in potential savings attributable to the lack of a "light duty" return-to-work program for Montgomery County Public Schools employees (July 2006 audit report).

Procurement Fraud – a \$500,000+ contract awarded for athletic field lighting upgrades was reversed by a MNCPPC hearing officer after a bid protest appeal that triggered a joint OIG/State criminal investigation (April 2007 decision).

Development District Funding - \$9.5 million recommended in the Executive's FY 2007 capital budget for road construction reimbursement to Clarksburg developer may be terminated or modified by the Council (September 2007 audit report).

Overtime Compensation - \$1.1 million in questioned overtime payments to FRS employees based on unapproved or improperly approved timesheets (April and December 2006 audit reports). An OIG follow-up audit was started in January 2008.

Fraud, waste, and abuse matters issued to management – 27

Recovery agent scheme - \$65,000 in checks issued by the Department of Finance triggered a 2007 joint OIG/prosecutor criminal investigation, resulting in a guilty plea by a North Carolina man and sentencing that required court-ordered restitution (investigative report to prosecutor).

OIG validated a complaint that alleged an employee unsafely transported three children in a County-owned vehicle. The investigation disclosed management was not aware the employee drove his children to/from private day care daily.

OIG validated complaints that a police department civilian improperly used a law enforcement equipped vehicle to commute on a daily basis.

A joint OIG/management investigation disclosed that an employee's timesheets improperly claimed time spent attending college courses as official work hours.

The OIG is currently investigating allegations that a County department authorized full payment to a company doing County business as a result of a contract or a non-competitive Council-approved grant, even though it appears all products and services were not delivered in a timely manner, if at all. I encourage the Commission to consider how a change in the inspector general selection process might impact the authority or ability of the OIG to conduct this type of investigation.

Joint investigations with prosecutors – 6

Pyramid scheme – a joint OIG/State investigation led to a felony indictment of an employee who used the County's email system to help carry out a pyramid scheme whose victims included co-workers.

OIG and State investigations are in progress regarding the integrity of information presented to the Montgomery County Planning Board by certain developers or their representatives. Allegations include, for example, that an unlicensed engineer repeatedly included inaccurate, false, or misleading information on land development applications.

Percentage of audit recommendations accepted by management – 67

Most audits undertaken by the OIG over the past three years focused on higher risk programs or expenditure categories – areas that had not been independently audited for at least the past 10 years. Some of the audit findings and recommendations not accepted by management were ultimately addressed by the Council.

Results Summary

While the annual costs for OIG audits and investigations over the past three years averaged about \$600,000 (using five full-time positions), the findings and recommendations reported to the Executive and Council resulted in recoveries, funds put to better use, questioned costs, and potential savings that totaled more than \$28 million in taxpayer funds.

What are the advantages and disadvantages of the current selection process?

My inspector general experience at the federal and state levels, combined with the OIG's accomplishments here in Rockville over the past three years, lead me to conclude that the advantages of the current Council selection and reporting relationship are many, while the disadvantages, if any, are inherent in the inspector general community.

With regard to the Executive–Council appointment factors the Commission is considering, it is important to incorporate independence requirements in the analysis, and remember that the overarching goal of the inspector general community is to improve, using quantifiable results, the performance and accountability of government programs and operations.

What are the advantages and disadvantages of an Executive-nominated, Council-approved Inspector General?

Although initial legislation proposed by County leaders in 1997 placed the IG under the Executive Branch, the performance results shared with you this morning suggest that the OIG, as an office of the Council, is in the right place. An OIG without independence or clear authority to audit and investigate matters related to all Council-funded programs cannot achieve its intended purposes.

In addition, the current OIG structure is conducive to expanding on one of the more important OIG initiatives – a successful fraud hotline pilot program capable of being used by all employees and contractors funded by Council appropriations. The hotline relies on a dedicated, toll-free number managed by an OIG contractor 24 hours a day, seven days a week. The terms and conditions of the hotline contract recognize that many hotline reports received by the OIG contain confidential information that requires an appropriate level of protection.

Other Jurisdiction Selection Processes

During your deliberations, I encourage you to obtain a diverse set of perspectives from County leaders, taxpayers, and the inspector general community regarding criteria to use to establish and maintain an environment conducive to an effective OIG in County government. Two valuable resources are the President’s Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE). The Inspector Generals shared website can be found at www.ignet.gov. In addition, many local government IGs, including Montgomery County, are members of the Association of Inspectors General. Other sources for OIG standards included Government Auditing Standards (revised July 2007), the Association of Certified Fraud Examiners, and the Government Finance Officers Association.

Regarding the IG selection process, I also want to share a personal experience and two examples:

- In 1996, while I was working at the Postal Service OIG, Congress became concerned about the independence of the office because the IG reported directly to the Postmaster General – the chief executive of the Postal Service. Congress took the bold step of changing the long-standing authority of the Postmaster General to appoint the IG by passing legislation that required the IG be appointed by and report to the nine-member Board of Governors – a Board that in many ways is Montgomery County’s equivalent of the Council. Congress believed this change was necessary to maintain the independence and objectivity of the OIG.

This change was, in my opinion, necessary for the OIG to properly serve all Postal Service stakeholders.

- Another example close to Montgomery County is the Washington Metropolitan Area Transit Authority (“Metro”) – in April 2006, the Metro Board of Directors replaced the Office of Auditor General who reported to the General Manager with an Office of Inspector General that reports directly to the Board. In approving the resolution that created the new OIG, the Board stated “The OIG shall have the greatest possible independence and freedom from interference ...”. With Metro’s annual operating budget about \$1 billion, the new OIG has an authorized complement of between 25 and 30.
- The New Orleans City Council recently approved a \$3.4 million budget for a newly created office of New Orleans Inspector General. The new OIG, appointed by the City’s Ethics Review Board, will have a staff of about 30 to provide audit, investigative, and related services for the City of New Orleans that has an annual budget of approximately \$460 million.

Finally, 30 years after the inspector general model was first introduced at the federal level, and as the PCIE and ECIE have helped make improvements, the value of OIGs appears to be gaining credibility throughout state and local jurisdictions. For example, within the past three months, I have received calls from two other Maryland counties and another in Virginia seeking insight into Montgomery County’s use of an OIG to help strengthen checks and balances as public officials look to improve their decisions regarding the best possible use of federal, state, and county tax dollars to address the needs of all stakeholders.

Thank you for the opportunity to make this presentation to the Commission today.

Charter Amendment to Exempt Small Geographic Tax Districts from Section 305 Calculation

Section 305 of the Charter limits the growth of property tax revenue in any year to the rate of inflation, with some exceptions, unless a supermajority of 7 Councilmembers agree to exceed it. The exceptions are properties that are newly constructed, rezoned, or have a changed use, property that is assessed differently than the previous year due to a change in State law, and any development district tax used to fund CIP projects.

This Charter amendment, adopted in 1990, was crafted in reaction to the steep rise of the *countywide* ad valorem property taxes of the late 1980s. However, when the amendment was debated, little if any thought was given to several *limited area* ad valorem taxes to which most residents were not subject. The Parking District property taxes in Bethesda, Silver Spring, Wheaton, and Montgomery Hills are optional property taxes: they are paid only by those developments wanting the County build and maintain their Code-required parking. Noise abatement district property taxes, similarly, are optional ad valorem taxes paid by residents to fund the debt service for noise walls that protect and enhance their properties. Urban District property taxes are not optional, but they are used for specific purposes in limited areas. In the future there may be other small-area property taxes proposed to fund local projects or programs.

An ad valorem tax is sometimes the most equitable means to fund geographically-specific projects or programs, since it is a wealth-based levy. But the current definition for the Section 305 calculation militates against using it. Exempting small-area ad valorem taxes from the calculation takes nothing away from the spirit of Section 305, and frees up the Urban District taxes and similar levies to provide more funding for local projects and programs. Former Councilmember Betty Ann Krahnke raised this same issue with respect to Urban Districts to the Charter Review Commission 11 years ago (see attached memo of February 4, 1997).

Together these three sets of property taxes are levied on less than 5% of the County's assessable base. The Urban Districts in Bethesda, Silver Spring, and Wheaton largely overlap the Parking Districts in these respective areas. There are currently only two Noise Abatement Districts—Bradley and Cabin John—although more may be created in the future. Special taxing districts could also be set up to fund other types of discretely local capital improvements.

One anticipated concern is that the County could establish a multitude of limited area ad valorem taxes to circumvent the countywide property tax limitation. Therefore, the Charter language should limit the aggregate assessable base to be exempted for limited areas to a certain percentage of the County's total assessable base: 10% would be a reasonable threshold.

Therefore, the Charter Review Commission should consider a proposal to amend the last sentence in Section 305 to read as follows:

This limit does not apply to revenue from: (1) newly constructed property, (2) newly rezoned property, (3) property that, because of a change in state law, is assessed differently than it was assessed in the previous tax year, (4) property that has undergone a change in use, [and] (5) any special taxing district that covers a limited geographic area, such as an urban district, parking lot district, or noise abatement district, if the aggregate assessable base of all exempted special taxing districts does not exceed ten percent of the total County assessable base, and (6) any development district tax used to fund capital improvement projects.

MEMORANDUM

February 4, 1997

TO: Charter Review Commission

FROM: Betty Ann Krahne

SUBJECT: The Relationship between Section 305 of the Charter and the Urban Districts

I. OVERVIEW OF THE SPENDING AFFORDABILITY AND PROPERTY TAX LIMITATIONS IN THE CHARTER

Section 305 of the Montgomery County Charter, Approval of Budget; Tax Levies, sets forth the guidelines for the Council's approval of the budget and the limitations on property tax levies. Section 305 restricts both growth of the overall aggregate operating budget as well as the use of property taxes to fund the aggregate operating budget. Section 305 also requires the Council to establish a process and criteria for adopting spending affordability guidelines and to annually adopt spending affordability guidelines for the capital and operating budgets.

Section 305 requires the affirmative vote of 6 Councilmembers to approve an aggregate operating budget that grows by more than the rate of inflation.

The definition of the aggregate operating budget is the total appropriation from current operating revenues for the next fiscal year. Under Section 305, the calculation of the aggregate operating budget ceiling explicitly includes some budget expenditures and excludes others.

- The included budgets are typically those funded through revenues raised through property and income taxes, transfer taxes, recordation taxes, fees and fines, plus current revenue funding for capital projects.

- The excluded items are appropriations for specific grants, enterprise funds, tuition and tuition related charges at Montgomery College, and the Washington Suburban Sanitary Commission. Excluded items generally are enterprise funds or charges related to the use of a particular service or commodity such as water and sewer charges or intergovernmental revenues such as state or federal aid programs.

Section 305 requires the affirmative vote of 7 Councilmembers if the amount raised from tax on existing real property exceeds the amount raised the previous year by more than the rate of inflation.

The charter requires the Council, by June 30 each year, to make tax levies necessary to finance the budgets. Each year the Council sets more than a dozen different property tax rates. Section 305 limits the increase in total revenue raised from the property taxes used to fund budgets included in the calculation of the aggregate operating budget.

The property revenues restricted under Section 305 of the charter include revenues raised through the levy of the general countywide property tax, the transit tax, the fire tax, the M-NCPPC property taxes (the metropolitan, regional and ALARF taxes), the recreation tax, the storm drainage tax, the urban district taxes for the Silver Spring, Bethesda and Wheaton urban districts, the taxes for two noise abatement districts and the parking district taxes for Silver Spring, Bethesda, Wheaton and Montgomery Hills.

Section 305 explicitly excludes revenue from newly constructed or rezoned property, property that has undergone a change in assessment or use and any development district tax used to fund capital improvement projects.

Section 305 requires the affirmative vote of 7 Councilmembers to approve any aggregate operating budget that exceeds the spending affordability guidelines then in effect.

Under the spending affordability process adopted by the Council, by October 31 of each year, the Council must set three guidelines for the aggregate operating budget:

- a ceiling on property tax revenues,
- a ceiling on the aggregate operating budget, and,
- the allocation of the aggregate operating budget among six categories: the current revenue funding for the capital budget, debt service, and operating expenses for MCPS, Montgomery College, the County government and M-NCPPC.

II. THE ESTABLISHMENT OF THE URBAN DISTRICTS

In 1986 and 1987 (prior to the adoption of amendments to Section 305 of the Charter), the County adopted Bill 9-86 to establish special taxing districts in Silver Spring, Bethesda and Wheaton. In proposing the legislation, the Executive stated that the services provided by the Suburban District at that time were inadequate to meet the needs of the central business districts. Also, the County needed enhanced services to protect the millions of dollars expended for streetscape amenities by the County and private developers.

The purpose of the urban districts was to provide an administrative and financial framework for enhanced services in these central business districts. The law established the boundaries of each district to be coterminous (for the most part) with the boundaries of the existing parking districts in each area. (The parking districts had been established in the 1940's to provide parking services using revenues from a parking district tax, plus parking fines and fees.)

The law provided three major sources of funding: an urban district tax, a parking fee surcharge transferred from the existing parking district for each area and a maintenance assessment for certain projects developed under the optional method development procedures. The administration of the urban districts was placed in the County government in the Department of Transportation which already had responsibility for many of the services to be provided by the districts.

Since their establishment, the urban districts have funded a collection of maintenance, promotion and security activities in each of the central business districts. The establishment significantly increased spending from less than \$500,000 in FY 85 to over \$2.5 million in FY 88.

III. THE IMPLEMENTATION OF SECTION 305

The urban district budgets are included in the calculation of the aggregate operating budget and are funded out of the County government agency allocation for the aggregate operating budget. The urban district tax revenues are included in the total property tax revenues subject to the charter restrictions on property taxes. Since the implementation of spending affordability, the Council has limited the growth of total property tax revenues to the rate of inflation or less.

IV. THE EFFECT OF SECTION 305 ON URBAN DISTRICT BUDGETS AND FUNDING

The restrictions imposed under Section 305 of the charter have had the following effects on urban district budgets and funding:

First, since the urban district budgets are funded out of the County government's agency allocation of the aggregate operating budget, the effect of Section 305, has been to subject urban district budgets to some of the same constraints imposed on other County government budgets.

The growth in County government budgets has been especially constrained in the last three years. In the urban districts, the budgets for Silver Spring and Wheaton peaked in FY 94. The adopted budgets for FY 97 are still below the FY 94 budget levels. Since increases in fixed and non-controlled costs (such as supplies, gasoline, rent, and insurance) are absorbed to determine the revenues available for programs, budget reductions typically have a magnified impact on the level of funding that is actually available for direct services.

To meet these budget restrictions, the urban districts have cut back funding for specific maintenance or promotional services. In Bethesda, for example, where the Bethesda Urban Partnership has planted an additional 300 trees since 1994, BUP has decreased the number of trees pruned each year to accommodate the extra maintenance required by the new trees.

Second, since the urban district tax is included in calculation of the total property tax revenues restricted by Section 305, the urban districts have not been able to increase the property tax rate to maintain the same level of service or provide for a higher level of service in the district.

Under the restrictions of Section 305 which limits the increase in total revenues from property taxes, any increase in property tax revenues above the Council guideline in one district or area must be offset by a compensating decrease some place else. This represents an important departure from the Council's historical use of special taxing districts which maintained an relationship between district taxes and services that could function independently of other district taxes and services.

Finally, the restrictions in Section 305 have led to a greater reliance on the use of parking district revenues to fund urban district services.

The overlap in the boundaries of the urban and parking districts in the CBDs, namely the urban district and the parking district, and the exclusion of parking district revenues from the restrictions in Section 305 have resulted in an sustained or growing reliance on parking district revenues. The limit in the original law restricting the amount transferred from the parking district to 80 percent of the combined revenues from both districts was increased to 90 percent in Bethesda in 1994 and would be increased to 90 percent in Wheaton under legislation proposed by the Executive and recently introduced by the Council.

The most striking example of the increasing reliance on parking district transfers and the relationship between the urban district tax and parking transfers is in Bethesda. Between 1989 and 1995 the parking district revenue share has increased from 40 percent to 50 percent while the urban district revenue share has dropped from 42% to 18%.

V. SUMMARY OF CHARTER AMENDMENT ISSUES

The County's use of urban districts was modeled, in part, on the concept of business improvement districts. While there were few districts in place when the County established its urban districts in the late 1980's, today more than 1,000 commercial areas in 49 states currently have business improvement districts. Business improvement districts are special taxing districts created by local governments, frequently at the request of major property owners in a commercial area. The districts enable local property owners in downtown commercial areas to tax themselves to pay for physical improvements and management services.

While districts vary in the size of their budgets and the services they fund, for the most part districts rely substantially on district assessments or taxes to pay for services. In some cases, business improvement districts have been established to give business and commercial property owners an opportunity to address the tax limitations imposed on governments which have resulted service cutbacks.

The restrictions in Section 305 have limited the operations of the urban districts in Montgomery County to provide and fund enhanced services. Of more immediate concern, in Bethesda and Silver Spring, the projections for the parking districts indicate that the parking districts will not be able to continue the level of support for urban districts they have provided in the past. This raises

the issue of where future funding for district services will come from, particularly in light of the constraints imposed under Section 305.

VI. RECOMMENDATION

I recommend that the Commission look at this issue. At the same time the Commission is exploring this issue, the County Council will be considering a report from the Office of Legislative Oversight. In its review of this report, the County Council may considered other options this issue such as replacing the urban district tax with an new assessment structure or the use of an enterprise fund. If the County Council decides to use one of these approaches, a charter amendment would no longer be necessary.

Key to Symbols Used in Schedule				SPECIAL SERVICE AREA TAXES															TOTAL SPECIAL SERVICE AREA TAX	TOTAL TAX RATE	TAX CLASS
Municipal District	TAX CLASS *	GENERAL COUNTY TAX	STATE TAX	MUNICIPAL DISTRICT TAX	TRANSIT TAX	FIRE DISTRICT TAX	MNCPPC TAXES			RECREATION TAX	STORM DRAINAGE TAX	PARKING LOT DISTRICT TAX	URBAN DISTRICT TAX	NOISE ABATEMENT DISTRICT TAX	DEVELOPMENT DISTRICT TAX						
							ADVANCED LAND ACQUISITION TAX	METRO-POLITAIN TAX	REGIONAL TAX												
M1 Friendship Heights	1	0.683	0.112	1.897 ^{M12}	0.037	0.105	0.001										0.143	2.833	1		
M2 Drummond	2	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003			0.080 ^{N1}			0.313	1.108	2		
M3 Oakmont	4	0.683	0.112	0.037 ^{M12}	0.037	0.105	0.001										0.143	0.975	4		
M4 Chevy Chase Village	5	0.683	0.112	0.397 ^{M12}	0.037	0.105	0.001										0.143	1.335	5		
M5 Section #3, Village of Chevy Chase	8	0.683	0.112	0.046 ^{M12}	0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.068	9		
M6 Town of Chevy Chase	14	0.683	0.112	0.040 ^{M12}	0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.063	14		
M7 Section #5, Village of Chevy Chase	15	0.683	0.112	0.046 ^{M12}	0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.074	15		
M8 Village of Martin's Additions	16	0.683	0.112	0.212 ^{M12}	0.037	0.105	0.001										0.143	1.150	16		
M9 North Chevy Chase	17	0.683	0.112	0.040 ^{M12}	0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.068	17		
M10 Chevy Chase View	19	0.683	0.112	0.096 ^{M12}	0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.124	19		
M11 Battery Park	20	0.683	0.112	0.020 ^{M12}	0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.048	20		
M12 City of Rockville	21	0.683	0.112	0.010 ^{M12}	0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.038	21		
M13 City of Gaithersburg	22	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.024	22		
M14 Town of Barnesville	23	0.683	0.112	0.008 ^{M12}	0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.036	23		
M15 Town of Laytonsville	24	0.683	0.112	0.052 ^{M12}	0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.080	24		
M16 Town of Potomac	25	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.025	25		
M17 Town of Garrett Park	26	0.683	0.112	0.192 ^{M12}	0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.217	26		
M18 Town of Glen Echo	27	0.683	0.112	0.122 ^{M12}	0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.147	27		
M19 Town of Somerset	28	0.683	0.112	0.022 ^{M12}	0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.050	28		
M20 Town of Brookeville	30	0.683	0.112	0.136 ^{M12}	0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.158	30		
M21 Town of Washington Grove	32	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003			0.080 ^{M2}			0.313	1.108	32		
M22 Town of Kensington	33	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003			0.080 ^{M2}			0.313	1.108	33		
M23 City of Takoma Park	35	0.683	0.112	0.050 ^{M12}	0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.075	35		
Parking Lot District																					
P1 Silver Spring (non-commercial)	38	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.028	38		
P2 Silver Spring (commercial)	41	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003			0.024 ^{M3}			0.257	1.052	41		
P3 Bethesda (non-commercial)	42	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.028	42		
P4 Bethesda (commercial)	44	0.683	0.112	0.181 ^{M12}	0.037	0.105	0.001										0.143	1.119	44		
P5 Wheaton (non-commercial)	45	0.683	0.112	0.049 ^{M12}	0.037	0.105	0.001			0.019							0.142	1.006	45		
P6 Wheaton (commercial)	47	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003	0.146 ^{M4}	0.024 ^{M4}				0.397	1.182	47		
P7 Montgomery Hills (non-commercial)	48	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003	0.280 ^{M4}	0.024 ^{M4}				0.517	1.332	48		
P8 Montgomery Hills (commercial)	49	0.683	0.112	0.212 ^{M12}	0.037	0.105	0.001										0.143	1.150	49		
P9 Bethesda-BP (non-commercial)	50	0.683	0.112	0.292 ^{M12}	0.037	0.105	0.001										0.143	1.230	50		
	53	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.028	53		
	57	0.683	0.112	0.150 ^{M12}	0.037	0.105	0.001			0.019							0.162	1.107	57		
	58	0.683	0.112	0.110 ^{M12}	0.037	0.105	0.001			0.019							0.162	1.067	58		
Urban District																					
U1 Silver Spring	61	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003					0.086 ^{M5}	0.319	1.114	61		
U3 Bethesda	64	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003			0.137 ^{M5}			0.379	1.163	64		
U5 Wheaton	67	0.683	0.112	0.050 ^{M12}	0.037	0.105	0.001	0.050	0.018	0.019	0.003	0.090 ^{M5}	0.012 ^{M5}				0.335	1.180	67		
	68	0.683	0.112	0.150 ^{M12}	0.037	0.105	0.001			0.019							0.162	1.107	68		
	74	0.683	0.112	0.580 ^{M12}	0.037	0.105	0.001	0.050	0.018	0.019	0.003						0.233	1.685	74		
Noise Abatement District																					
N1 Cabin John	76	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003	0.180 ^{M6}	0.012 ^{M6}				0.425	1.220	76		
N2 Bradley	78	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003		0.012 ^{M6}				0.245	1.040	78		
	79	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003	0.090 ^{M6}	0.012 ^{M6}				0.335	1.130	79		
	80	0.683	0.112	0.050 ^{M12}	0.037	0.105	0.001	0.050	0.018	0.019	0.003	0.180 ^{M6}	0.012 ^{M6}				0.425	1.270	80		
Development District																					
D1 Kingsview Village	81	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003		0.030 ^{M6}				0.263	1.058	81		
D2 West Germantown	82	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003	0.240 ^{M6}	0.010 ^{M6}				0.503	1.290	82		
	83	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003	0.120 ^{M6}	0.010 ^{M6}				0.383	1.178	83		
	84	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003	0.340 ^{M6}					0.673	1.268	84		
	85	0.683	0.112		0.037	0.105	0.001	0.050	0.018	0.019	0.003	0.120 ^{M6}					0.353	1.148	85		

* There is no real property tax for tax class 29

Use of the Revenue Stabilization Fund in FY 2010 and FY 2011

The County Executive's proposed FY11 Operating Budget combines the techniques set forth on page 12. In his March 15, 2010 transmittal letter to the County Council, Mr. Leggett proposed to transfer approximately \$102 million from the Revenue Stabilization Fund to the General Fund to offset a FY 2010 budget shortfall in the General Fund and to partially replenish the Revenue Stabilization Fund in FY 2011 by transferring \$37 million from the General Fund to the Revenue Stabilization Fund, Budget, p. 69-5, "Revenue Stabilization." The letter, p. 4, noted that past cost reduction efforts were focused on "preserving direct services to the maximum extent possible", but that this was no longer possible. The letter proposes, p. 6, an increase in the energy use tax of \$50 million. The Budget, p. 7-2, also proposes borrowing \$325 million for capital improvements. See also p. 69-5, "Debt Service."

In a March 25, 2010 memorandum sent to Council President Floreen, the Executive recommended the Council take the following actions to transfer an additional \$48.4 million to the Revenue Stabilization Fund:

1. Increase the fuel energy tax in FY10 and FY11 (above the March 15 proposal); and
2. Reduce the FY10 set aside for snow removal costs.

The Executive further recommended that the FY10 transfer from the Revenue Stabilization Fund to the General Fund be reduced to \$71.6 million and the FY11 transfer from the General Fund to the Revenue Stabilization Fund be \$55.1 million.

11 Jan 2010

TO: Charter Review Commission
FROM: CRC Redistricting Committee, Charles Wolff, Chair
SUBJ: Procedures for better redistricting

Incumbents almost always win in general elections now, in part because redistricting has favored political parties more than the public's interest in having real choices. Groups advocating for good government generally favor a process less dominated by political concerns, for example, the Common Cause web page on redistricting states that "Common Cause supports redistricting reforms such as creating independent commissions to conduct redistricting, establishing criteria for how districts must be drawn, requiring a fair and transparent process for conducting redistricting, and creating 'shadow' commissions to present their own recommendations."

Our committee has done extensive research on this. It is summarized below with references to our full reports at the end.

A dozen or so states have reformed their redistricting but remain largely silent on the difficult specifics of **how to get a good panel of unbiased members** representative of the different interests of society.

By facing this---the hardest issue(?)---**we could become a nationally quoted model for redistricting** and, conceivably, even inspire our own state legislature.

STANDARDS FOR DRAWING ELECTION DISTRICT BOUNDARIES

Federal.

One-person-one-vote derives from the 14th amendment to U. S. Constitution.
The Voting Rights Act aims to protect minority voting rights.
Even though both apply to all states, the states often list a similar requirement.

State Redistricting Commissions, etc. that we Reviewed

AZ, CA, FL, HI, ID, IA, MD, MN, MT, NJ, OH, WA.

Standards used by at least two of these states were:

1. Equal population
2. Contiguous
3. Compact
4. Draw no lines to protect or hurt an incumbent, a group, or a political party.
5. Respect communities of interest
6. Don't split cities, counties, or towns if possible
7. Protect minority voting power
8. Follow natural geographic features such as streams and mountains.
9. Encourage political competitiveness
10. Do not use past voting history or party registration

Item number	1	2	3	4	5	6	7	8	9	10
Number of states using it	12	10	9	5	5	5	4	5	3	2

Maryland and its Counties

For legislative districts, the MD constitution sets standards (items 1, 2, 3, 6, 8 above) but it imposes none for council districts in Montgomery County. Only the Montgomery Charter sets standards (items 1, 2, 3 above) for our Council districts.

Of the ten counties with redistricting commissions, the laws of six specify criteria that apply to the drawing of districts. All six require items 1, 2, 3 above, while some add one or more of items 5, 6, and 8. In the three jurisdictions studied that have no redistricting commission, a plan is prepared by the mayor of Baltimore, or the Commissioners of Calvert County, or the Maryland General Assembly for Carroll County.

TEN REDISTRICTING COMMISSIONS IN MD.

Appointment

In six of the counties, including Montgomery, the members of the redistricting commission are appointed from lists provided by the central committees of political parties, with the Council/Commissioners appointing an additional member.

In four counties, the Council/ Commission appoints the members of the redistricting commission, with no process specified.

Qualifications to be on a Commission

Surprisingly few specifics are stated. Anne Arundel County requires “representative citizens”. Dorchester and Montgomery Counties require at least one person from each district. Finally, the following counties ban elective office holders from the commission: Baltimore, Dorchester, Harford, Howard, Montgomery, and Prince Georges.

RECOMMENDATIONS BY THINK TANKS, ETC.

Brookings Institute, Cato Institute, American Bar Association., League of Women Voters, State Chapters of Common Cause

Criteria to use when Redistricting (classified as one of the numbered items above)

3 Compactness	LWV, CC, CI
4 Don't hurt or favor ...	BI, CC
5 Communities of interest	LWV, CC
6 Don't split cities, etc.	LWV, CC
7 Minority rights	LWV, CC
8 Geographic features	LWV, CC
9 Competitiveness	LWV, CC, BI

The ABA mentioned no criteria and recommended that it be left to the states

Qualifications for serving on a Redistricting Commission

There's a big vacuum here. The five groups appear to not make specific recommendations on this. States are almost completely silent on qualifications and focus on the process for appointing people.

California's new method is an exception:

You must have voted in two of the last three elections and been consistently registered with the same party (or none) for five years.

You are disqualified if you or a family member were:

- 1) appointed, elected, or ran for congress or state office in the last ten years.
- 2) served or worked for a political party or campaign committee for state office or congress.
- 3) registered as a lobbyist with a federal, state or local government
- 4) contributed \$2000. or more to a candidate in any year.

We have discussed that Montgomery County's Ethics Commission members must meet certain standards that could also be applied to the Redistricting Commission, such as no members may be a government employee, candidate for office, campaign worker, or lobbyist.

HOW DOES IT WORK IN PRACTICE ?

A sampling of the political science literature finds some writers expressing substantial skepticism on how much improvement will occur nationwide if one moves from partisan or bipartisan redistricting to a nonpartisan method. There are clear immediate benefits in responsiveness (turnover of seats) and reduced bias toward one party but they diminish with time and, in some states, have evaporated after several elections.

A study of U. S. House seats found that incumbents indeed benefit from party controlled redistricting and even more so under bipartisan redistricting. But another study finds that much of the polarization of districts develops between redistricting cycles.

Adding criteria to the process, as our committee may propose, should diminish the effects of partisanship. The public hearings in our county act as another constraint on partisan bias.

But politicized redistricting has likely occurred even in Montgomery County. A controversial map was adopted in 1990 that placed homes of two council members (Betty Ann Krahne & Nancy Dacek) in the same district from which only one of them could legally be reelected. Had they been in the majority party, different district lines would almost certainly have been drawn.

Extracted from full reports by

Karen Czapansky, 2 Dec 2009, "Political Science Literature about Redistricting Process"

Mollie Habermeier, 30 Nov 2009, "Redistricting Procedures in MD Counties and Baltimore City"

" " , 3 Jan 2010, Criteria for Redistricting Recommended by National Think Tanks

Wilbur Friedman, 8 Dec 2009, "Whether [we] should Impose Standards on a Council Redistricting Plan"

Judith Vandegriff, 7 Dec 2009, "Sarasota County Redistricting Guidelines"

" " 2 Jan 2010, Qualifications, by State, for Appointment to a Redistricting Commission

Charles Wolff, 8 Dec 2009, "Redistricting Commissions and Criteria in Six States"

" " 1 Jan 2010, "Getting Good People for Redistricting"

TO: The Charter Review Commission

FROM: Wilbur H. Friedman

RE: Whether a Charter amendment should impose standards on a council
manic re-districting plan

DATE: December 8, 2009

PART ONE. Standards and criteria in
the Constitution of the United States

The one-person one-vote requirement contained within the 14th Amendment clearly applies to state legislatures. Thus *Reynolds v. Sims*, 377 U.S. 533 (1964) imposed the requirement on the districting of the Alabama legislature. I have not yet found a case which holds that the 14th Amendment applies to political subdivisions within states. The recent case of *Northwest Austin Municipal Utility District Number One v. Holder*, ___ U.S. ___, 129 S.Ct 2504, 174 L.Ed.2d 140 (June 22, 2009) makes clear that the Voting Rights Act, and the 15th Amendment which underlies it, apply to subdivisions of states. But few would deny that the requirements of the 14th Amendment apply to political subdivisions. Thus a memorandum by Senior Assistant County Attorney Linda B. Thall dated March 20, 1991, states that the Amendment so applies. The Memorandum goes on to say that the election districts must be contiguous and compact, although, as the Court of Appeals noted in *In the Matter of the Legislative Redistricting of the State*, 370 Md. 312, 353 n. 28 (2002), the Constitution of the United States does not "contain specific contiguity, compactness, or due regard for political subdivision boundaries requirements."

PART TWO. Standards and criteria in a
number of state constitutions and statutes

2.1. Idaho

Idaho's constitution, Article 3, Section 2, Subsection 3 defines creates a commission for reapportionment and delegates to the legislature the appropriate standards for the commission to follow. Title 72, Chapter 15 of the Idaho statutes, Section 52-1506, by its terms, covers both Congressional and state legislative districts and sets forth these standards: (1) Redistricting plans shall rely only on census data; (2) Plans shall to the maximum extent possible preserve traditional neighborhoods and "local communities of interest"; (3) Districts shall be substantially equal in population, and "should" seek to comply with all applicable federal standards and statutes; (4) "To the maximum extent possible, the plan should avoid drawing districts that are oddly shaped."; (5) "Division of counties shall be avoided whenever possible" and the number of divisions should be minimized; (6) "To the extent that counties must be divided... such districts shall be composed of contiguous counties."; (7) "District boundaries shall retain the local voting precinct lines to the extent" the boundaries are roads, streams, lakes and the like; (8) "Counties shall not be divided to protect a particular political party or a particular incumbent."; and (9) Where a legislative district contains more than one county, the counties involved must be connected by an interstate highway.

2.2 Montana

Article V, Section 14 of the Montana Constitution governs the composition of the state legislature. "Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in size as is practicable." Section 5-1-115 of the Montana Code sets forth the following criteria: (1) "Subject to federal law, legislative and congressional districts must be established on the basis of population."; (2) A plan is subject to the Voting Rights Act and must comply with the following criteria, in order of importance: (a) The districts must be equal to the greatest extent possible, subject only to the requirements of the Voting Rights Act; (b) District boundaries must coincide with the boundaries of political subdivisions of the states; (c) The districts must be contiguous, joined by lines rather than points; (d) The districts must be compact, subject to the requirements of the Voting Rights Act. The ideal of compactness occurs when length and width are equal. (3) Districts may not be drawn to favor a political party or an incumbent legislator or a member of Congress.

2.3 New Jersey

Article II, Section II of the New Jersey Constitution creates a redistricting commission for the Congress (but not the state legislature), but establishes no standards. Title 19, Section 19:46-9 of the New Jersey statutes sets forth the standards for the Congressional districts:

The redistricting plan (a) "shall provide for equality of population among districts; for the preservation of minority voting status within each district; for the geographical contiguity of individual districts; and for reasonable protection of districts from decade to decade against disruptive alteration due to redistricting." Subsequent paragraphs expand on these standards. (2) reads: "No Congressional district shall be established which fragments an ethnic or racial minority community which, if left intact, would constitute a majority or significant number of voters or potential voters within a single district with the ability to elect a candidate of their choice."

2.4 Hawaii

Article IV of the Hawaii Constitution creates a reapportionment committee for the state legislature and the U.S. House of Representatives. Section 4 creates four basic island units. Section 6 creates eight standards:

1. No district shall extend beyond the boundaries of any basic island unit;
2. No district shall be drawn as to unduly favor a person or political faction.
3. Except in the case of districts encompassing more than one island, districts shall be contiguous.
4. Insofar as practicable, districts shall be compact.
5. Where possible, districts shall follow permanent and easily recognized features, such as streets, streams....
6. Where practicable, representative districts shall be wholly within senatorial districts.
7. No more than four members shall be elected from any district.
8. Where practicable, submergence of an area in a larger district wherein substantially different socio-economic interests predominate shall be avoided.

Section 9 authorizes the commission to redraw congressional boundaries. No standards are created.

Hawaii revised statutes Section 25-2 (b) sets forth standards for congressional reapportionment. They are numbers 2, 3, 4, and 8 above, renumbered as 1, 2, 3 and 6, plus: 4. "Where possible, districts shall follow permanent and easily recognized features, such as streets, streams... and where practicable, shall coincide with census tract boundaries." (5) Where practicable, state legislative districts shall be wholly included within congressional district

2.5. Washington

I could find nothing in the constitution on redistricting for the House of Representatives. The constitutional provision governing redistricting for the legislature is Section 43. Subsection 5 sets forth standards: population as "nearly equal as practicable"; "to the extent reasonable," contiguity, compactness, "convenience", natural geographical separation, and the requirement that the plan not be drawn purposely to favor or discriminate against any political party or group.

Section 44.05.090 of the Revised Code of Washington, part of the State government section, has somewhat different standards. The second is that legislative districts coincide with the boundaries of local political subdivisions "and areas recognized as communities of interest." The third is that whenever practicable, precincts should be within a single legislative district.

Section 29A.76.010 of the Revised Code of Washington has the following standards: equality of population, compactness, contiguity, no favoring or disfavoring any racial group or political party, coincidence or boundaries and preservation of communities of interest

2.6 Arizona

Proposition 106, passed in 2000, controls both the House of Representatives and local legislative districts. It created the following standards: A. Compliance with the United States Constitution and the Voting Rights Act; B. Equal population; C. Compactness and contiguity; D. "Respect communities of interest to the extent practicable"; E. "To the extent practicable" separate districts by visible geographic features; F. "To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to other goals."

2.7 Iowa

Article III Section 34 of the Iowa Constitution prescribes the standards for the state legislature in the following order: compactness, contiguity, apportionment on the basis of population; and other factors if "not in conflict with the Constitution of the United States."

Iowa Code, Section 42.4, sets forth the standards for both legislative and congressional districts: (1) They shall be established "on the basis of population" and be "as nearly equal as practicable" in this respect. Legislative districts may vary by $\pm 0.5\%$, state senatorial districts by $\pm 2.5\%$, and Congressional districts by $\pm 0.5\%$, "except as necessary to comply with Article III, Section 37 of the State Constitution, which requires that Congressional districts be contiguous and that no county may be divided to form a Congressional district. The section then proceeds in Subsection 2 to impose on all districts the following second tier standards: coincidence with existing political boundaries; minimize the number of counties and cities divided into

different election districts; where possible divide up large political subdivisions first; convenience; contiguity (districts meeting only at a point are not contiguous); compactness as defined either by a length-width measurement or by a perimeter measurement; a ban on favoring or disfavoring political parties, incumbents, or to augment or dilute a racial majority. To the extent practicable, each representative district must be part of a single senatorial district.

PART THREE. Standards and criteria in the Constitution of Maryland, the Maryland Statutes, the Montgomery County Charter, and Montgomery County ordinances.

The Maryland Constitution provision which sets standards for the state legislature in Article III Section 4.

Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions.

This provision does not expressly apply to the districting of councilmanic districts. The March 20, 1991 memorandum from the senior assistant county attorney states that the due regard language directly above "is not binding on the County" courts would likely approve the consideration of the factor.

Article XI-A, Local Legislation, Section 3A, permits Montgomery County to elect members by the voters of councilmanic districts, but says nothing of standards.

The State Government Article, Section 2-201 ff., sets forth the legislative districts for the state legislature, but says nothing of standards.

Article 25A of the Maryland Statutes, involving the Chartered Counties, Section 5 (H), authorizes the County Council to "rearrange and create election districts and precincts."

Section 103 of the Charter divides the County into five councilmanic districts and adds: Each district shall be compact in form and be composed of adjoining territory. Populations of the Council districts shall be substantially equal.

Whether grounded in the 14th Amendment, the Maryland Constitution, or in the express powers of the County, the requirement has the force of law.

In *In the Matter of the Legislative Redistricting of the State*, (MLRS) 370 Md. 312, 360, the court stated that the contiguity and compactness requirements are intended to prevent political gerrymandering, which would undo the policy of one-person one-vote.

DISCUSSION

Review of the foregoing indicates that the standard of one-person one-vote, the ancillary standards of contiguity and compactness, and the further standards of the Voting Rights Act, all govern the conduct of the makers of the plan for redistricting. Is there any reason to amend the Charter to impose these standards again, or are we rather painting the lily? When redistricting is done by politicians, lawful redistricting is intended to achieve and most often does achieve, partisan political results. *MLRS*, pp. 321-322. In contrast, when redistricting is done by courts, the redistricting plan gives no thought to the political considerations. *MLRS* p. 323 ff.

If we are apparently trying to get politicians to act more like judges, I don't think that imposing the same standards on them again will be of much value. If we are trying to make the body that draws up the redistricting plan into one more technocratic and less political, perhaps it does. But I think we would have to include the standard: "Due regard shall be given to natural boundaries and the boundaries of political subdivisions."

Redistricting Commissions & Criteria in Six States

From Charles Wolff

CCE stands for “compact, contiguous, equal population”

D, R, N stand for Democrat, Republican, Neither

Criteria are in bold face, following Mollie’s example

ARIZONA

Commission, multi-partisan, 5 members

Nominations:

A pool of 25 (10 D., 10 R., 5 N) named by
Commission on Appellate Court Appointments

Appointment

Majority & Minority Legislative Leadership name 4 from pool.
These 4 then appoint a fifth member from the pool.

Criteria for mapping:

CCE, respect communities of interest,

**DO NOT consider party registration or voting history for initial map, but use
it later for revising map to favor competitive districts.**

CALIFORNIA

Commission, multi-partisan, 14 members

Nominations:

Any citizen is invited to apply. From these, a pool of 60
(20 D, 20 R, 20 N) is named by a panel of state auditors.
Selection based on applicants’ **analytic skills, impartiality, diversity**

Appointment:

Legislative leaders veto from the pool until (12 D, 12 R, 12 N) are left.
A random drawing appoints eight (3 D, 3 R, 2 N) from pool.
These 8 select the last six (2 D, 2 R, 2 N) from pool with goal of balancing
the **skills & diversity** of the final 14 member panel.

Criteria for mapping:

**CCE, comply with Voting Rights Act, do not divide communities of interest,
DO NOT consider incumbent residences or act to protect incumbents**

HAWAII

Commission, bipartisan, 9 members

No Nominations

Appointment:

Legislative leaders of each major party appoint 4 each.
These 8 appoint the ninth member by a vote of at least 6 to 2.

Criteria for mapping:

**CCE, do not favor a person or political party, do not split census blocks,
Don’t split neighborhoods (defined as elementary school boundaries),
do not discriminate against voters based on race, color, or language group.**

IOWA

Legislative Services Staff (career civil servants) produces a redistricting map followed by a public hearing. Revised map goes to legislature. If they reject it, the staff can submit up to two more maps to legislature. If all this fails, legislature tries by itself and if it fails, the courts draw final map.

Criteria for mapping:

CCE, preserve unity of counties and cities, DO NOT USE political affiliation, previous election results, addresses of incumbents, or demographic information except for total population of each proposed district

Advisory Commission to above Legislative Staff, bipartisan, 5 members

No nominations

Appointment

Two members are appointed by each main party caucus of the Legislature.

These four choose a fifth member who acts as chair

MINNESOTA

(Method proposed by bipartisan H. Humphrey Institute of Public Affairs,
Passed by MN Senate in May 2009, but may fail in House)

Commission, bipartisan, 5 retired judges

No nominations

Appointment:

Majority and minority leaders in Legislature appoint 4 judges to the commission

The four judges appoint a fifth retired judge to complete the panel.

Criteria for mapping:

CCE, don't dilute voting strength of a minority population, encourage political competitiveness, try to preserve communities of interest, respect city, town and county boundaries, draw no lines to protect or defeat an incumbent

OHIO (proposed, maybe adopted by now)

Anyone can design and submit a redistricted map.

Each plan is then evaluated using a point system with the highest priority placed on competitiveness. A nonpartisan commission chooses among the three highest scoring plans (Many details still unknown to me)

IN PRACTICE

In Minnesota, in 3 of the last 4 decades, the Governor and Legislature could not agree on a redistricting map so the job fell to the courts.

“In each case, panels of judges produced maps deemed acceptably fair to both major political parties.” *Editorial, Minneapolis Star Tribune, March 10, 2009.*

MEMORANDUM

TO: Charter Review Commission

FROM: Mollie Habermeier

DATE: November 30, 2009

RE: Redistricting procedures in Maryland counties and Baltimore City

As part of the redistricting subcommittee, I have researched the redistricting process in the 23 Maryland counties and in Baltimore City. I found information on 14 counties (including all nine charter counties) and Baltimore City online. In two of these counties, it appears that redistricting does not occur, because all the council members are elected at large. I have included the laws governing redistricting and the website sources. I added the bold italics to highlight the membership requirements and criteria for the redistricting commissions. The Maryland Association of Counties was the source for type of government (charter, code home rule, or commissioner).

I. Summary

In six counties, the members of the redistricting commission are appointed from lists provided by the central committees of political parties, with the Council/ Commissioners appointing an additional member. These counties are Dorchester, Harford, Howard, Montgomery, Prince George's, and Queen Anne's counties.¹

In four counties, the Council/ Commission appoints the members of the redistricting commission, with no process specified. These are Anne Arundel, Baltimore County, Wicomico, and St. Mary's.

In three jurisdictions, there is no redistricting commission, and the mayor (of Baltimore City) or the Commissioners prepare a plan (Calvert County), or the Maryland General Assembly sets the district boundaries (Carroll County).

Of the ten counties with redistricting commissions, five specify criteria that the redistricting commissions must use. All five provide that the districts must be compact, contiguous, and substantially equal in population. Additional criteria are that due regard is given

¹ The 1998 Charter Review Commission Report on page 8 stated that "Redistricting procedures employed by other charter counties in Maryland turned out to be inapplicable to Montgomery County since no other county operates with the unique combination of (1) a redistricting commission whose membership is largely determined by political central committees and (2) a council with members elected from individual districts." This is not the case today. Dorchester, Harford, Howard, Prince George's, and Queen Anne's have these two characteristics.

to natural, geographic, and community boundaries; or that the districts have common interests as a result of geography, occupation, history, or existing political boundaries.

II. Charter Counties and Baltimore City

Anne Arundel County Charter

Sec. 207. Revision of councilmanic districts.

After receiving the report of the Charter Revision Commission as provided in Section 1203 of Article XII of this Charter, the County Council is hereby empowered by ordinance enacted by the affirmative vote of not less than five members, to revise, amend or reconstitute councilmanic districts then in effect but not to change the number thereof. Any such ordinance shall not be subject to executive veto and shall become law on the date of its enactment by the Council. Any such ordinance shall not be an emergency ordinance and shall be subject to the referendum provisions of Article III of this Charter.

Sec. 1203. Decennial Charter Revision Commission.

At or before the first annual legislative session of the County Council after the publication of each decennial census of the population of the United States, the County Council shall appoint by resolution a Charter Revision Commission for the purpose of making a comprehensive study of the County government and the updating of its Charter where necessary, including the matter of the revision of the councilmanic districts of the County. The Commission shall be composed of ***five representative citizens of the County*** who shall report to the Council their findings and recommendations, together with drafts of any recommended revisions of the Charter, within twelve months after their appointment. The Charter Revision Commission shall receive from the County an appropriation sufficient to carry out its duties and responsibilities.

[http://www.amlegal.com/nxt/gateway.dll/Maryland/annearundelco_md/annearundelcountycode2005?fn=altmain-nf.htm\\$f=templates\\$3.0&vid=amlegal:annearundelco_md](http://www.amlegal.com/nxt/gateway.dll/Maryland/annearundelco_md/annearundelcountycode2005?fn=altmain-nf.htm$f=templates$3.0&vid=amlegal:annearundelco_md)

Baltimore City Charter

Article III. City Council.

Section 7. Council districts.

(a) Criteria for redistricting.

The City shall be divided by ordinance into districts for the election of members of the City Council. ***The criteria in redistricting shall be equality of population, contiguous territory, compactness, natural boundaries, existing council district lines, and the standards established by the Supreme Court of the United States.***

(b) Redistricting plan.

Following each census of the United States *the Mayor shall prepare a plan* for council redistricting. The Mayor shall present the plan to the City Council not later than the first day of February of the first municipal election year following the census. After the Mayor's plan is presented to the City Council, the Council may adopt it or amend it or the City Council may adopt another plan. If no plan has been adopted by the City Council within sixty days after the Mayor's plan is presented, the Mayor's plan shall take effect as the redistricting ordinance.

(c) {Vacant}

(d) Incumbent's residency.

No member of the City Council shall be required to vacate that office by reason of a change of boundary lines of that member's council district made during that member's term, as long as that member remains a resident of Baltimore City.

(e) Residency duration for next election.

For elections following the adoption of redistricting plans, members of the City Council shall have been residents of the districts they have been chosen to represent since the preceding July 1.

<http://cityservices.baltimorecity.gov/charterandcodes/ChrtrPLL/01%20-%20Charter.pdf>

Baltimore County Charter

Sec. 207. Revision of councilmanic districts.

(a) Redistricting commission; composition. Not later than March 1 of the year after each decennial census of the United States, the County Council shall establish, by resolution, a councilmanic redistricting commission. *The commission shall be composed of five members appointed by the County Council.* A person who holds elective office is not eligible for appointment to the commission.

(b) Commission action. The commission shall hold at least three public hearings, and, by October 15 of the year in which the commission is appointed, the commission shall recommend to the county council legislation to revise, amend, or reconstitute, but not to increase or decrease the number of, councilmanic districts in effect at such time. *The legislation shall provide for councilmanic districts that are compact, contiguous, and substantially equal in population, and in which due regard is given to current natural, geographic, and community boundaries.*

(c) Council action. The county council shall hold one or more public hearings on the recommendation of the commission, and by January 31 of the year following the appointment of the commission, the council shall adopt a final redistricting plan by legislative act adopted by a majority plus one of the total number of county council members. The final plan may not increase or decrease the number of councilmanic districts in effect at the time. ***The plan shall provide for councilmanic districts that are compact, contiguous, and substantially equal in population, and in which due regard is given to current natural, geographic, and community boundaries.***

(d) Final redistricting plan. The final redistricting plan adopted by the county council is not subject to the executive veto provided in Article III, Section 308(g), but is subject to the referendum provision of Article III, Section 309.

http://www.amlegal.com/baltimoreco_md/

Dorchester County Charter

213. Redistricting.

(a) Not later than April 1 of the year after each decennial census date, the Council shall appoint a Commission on Redistricting. ***The central committee of each political party that polled at least 25 percent of the total vote cast for all the candidates for Council at the last preceding general election shall nominate five persons to serve on the Commission. Each such list shall include one person who resides in each district. The Council shall appoint all such nominees as members of the Commission as well as one additional member of the Commission. The Council shall appoint the Chairperson of the Commission from among the Commission members.*** No person shall be eligible for appointment to the Commission who holds elective office.

(b) By November 15 of the year before the year in which redistricting is to take effect, the Commission shall present to the Council a plan of council districts, together with a report explaining it. Within 30 days of receiving the plan of the Commission, the Council shall hold a public hearing on the plan. If within 90 days after presentation of the Commission's plan no other law reestablishing the boundaries of the council districts has been enacted, then the plan, as submitted, shall become law.

(c) ***Any council district established in accordance with this section shall be compact, contiguous, substantially equal in population, and have common interests as a result of geography, occupation, history, or existing political boundaries.***

(d) An ordinance establishing council districts shall be exempt from referendum.

Harford County Charter

Section 205. Redistricting Procedure.

(a) The boundaries of Councilmanic districts shall be established in 1974 and re-established in 1982 and every tenth year thereafter. Whenever district boundaries are to be established or re-established, the Council shall appoint, not later than February 15 of the year prior to the year in which redistricting is to be effective, a commission on redistricting, composed of *two members from each political party chosen from a list of five names submitted by the Central Committee of each political party which polled at least fifteen percent of the total vote cast for all candidates for the Council in the immediately preceding regular election. The Council shall appoint one additional member of the Commission.* The Commission shall, at its first meeting, select one of its members to serve as chairperson. No person shall be eligible for appointment to the Commission if he/she holds any elected office.

(b) By October 1 of the year prior to the year in which redistricting is to be effective, the Commission shall prepare, publish, and make available a plan of Councilmanic districts and shall present that plan, together with a report explaining it, to the Council. *The plan shall provide for Councilmanic districts that are compact, contiguous, and substantially equal in population.* No less than fifteen calendar days and no more than thirty calendar days after receiving the plan of the Commission, the Council shall hold a public hearing on the plan. If within seventy calendar days following presentation of the Commission's plan no other law establishing or re-establishing the boundaries of the Councilmanic districts has been enacted, then the plan, as submitted, shall become law.

Howard County Charter

Section 202(f) Redistricting.

Boundaries.

The Council shall appoint, by resolution, not later than April 1 of the year after each decennial census date, a Councilmanic Redistricting Commission. *The Central Committee of each political party which polled at least twenty-five percent of the total vote cast for all the candidates for the Office of County Executive in the last preceding general election shall nominate three persons to serve on the Commission. The Council shall appoint all such nominees as*

members of the Commission as well as one additional member of the Commission. The Council shall appoint the Chairperson of the Commission from among the Commission members. No person shall be eligible for appointment to the Commission who holds elective office.

By October 15 of the year in which the Commission is appointed, the Commission shall prepare a plan of Councilmanic Districts and shall present that plan to the Council. Within thirty days after receiving the plan of the Commission, the Council shall hold a public hearing on the plan. If by March 15 of the year following submission of the plan, no ordinance re-establishing the boundaries of the Councilmanic Districts has been enacted, then the plan as submitted by the Commission shall become law. ***Any Councilmanic District established in accordance with this Article shall be compact, contiguous, substantially equal in population, and have common interest as a result of geography, occupation, history, or existing political boundaries.*** Any ordinance establishing Councilmanic Districts shall be exempt from referendum.

The Board of Supervisors of Elections shall take any necessary steps to implement any such revisions of the Councilmanic District Boundaries so adopted.

http://library6.municode.com/default-test/home.htm?infobase=14680&doc_action=whatsnew

Montgomery County Charter

Sec. 104. Redistricting Procedure.

The boundaries of Council districts shall be reviewed in 1972 and every tenth year thereafter. Whenever district boundaries are to be reviewed, the Council shall appoint, not later than February 1 of the year before the year in which redistricting is to take effect, a commission on redistricting. ***The Commission shall be composed of four members from each political party chosen from a list of eight individuals submitted by the central committee of each political party which polled at least fifteen percent of the total vote cast for all candidates for the Council in the last preceding regular election. Each list shall include at least one individual who resides in each Council district. The Council shall appoint one additional member of the Commission. The Commission shall include at least one member who resides in each Council district, and the number of members of the Commission who reside in the same Council district shall not exceed the number of political parties which submitted a list to the Council.*** The Commission shall, at its first meeting, select one of its members to serve as its chair. No person who holds any elected office shall be eligible for appointment to the Commission.

By November 15 of the year before the year in which redistricting is to take effect, the Commission shall present a plan of Council districts, together with a

report explaining it, to the Council. Within thirty days after receiving the plan of the Commission, the Council shall hold a public hearing on the plan. If within ninety days after presentation of the Commission's plan no other law reestablishing the boundaries of the Council districts has been enacted, then the plan, as submitted, shall become law.

[http://www.amlegal.com/nxt/gateway.dll/Maryland/montgom/partithecharternote?f=templates\\$fn=document-frameset.htm\\$q=redistricting%20\\$x=server\\$3.0#LPHit1](http://www.amlegal.com/nxt/gateway.dll/Maryland/montgom/partithecharternote?f=templates$fn=document-frameset.htm$q=redistricting%20$x=server$3.0#LPHit1)

Prince George's County Charter

Section 305. Redistricting Procedure.

The boundaries of Council districts shall be reestablished in 1982 and every tenth year thereafter. Whenever district boundaries are to be reestablished the Council shall appoint, not later than February 1 of the year prior to the year in which redistricting is to be effective, a *commission on redistricting, composed of two members from each political party chosen from a list of five names submitted by the Central Committee of each political party which polled at least fifteen percent of the total vote cast for all candidates for the Council in the immediately preceding regular election. The Council shall appoint one additional member of the Commission who shall serve as chairman.* No person shall be eligible for appointment to the Commission if he holds any elected office. By September 1 of the year prior to the year in which redistricting is to be effective, the Commission shall prepare, publish, and make available a plan of Council districts and shall present that plan, together with a report explaining it, to the Council. The plan shall provide for Council districts that are compact, contiguous, and equal in population. No less than fifteen calendar days and no more than thirty calendar days after receiving the plan of the Commission, the Council shall hold a public hearing on the plan. If the Council passes no other law changing the proposal, then the plan, as submitted, shall become law, as of the last day of November, as an act of the Council, subject to Sections 320 and 321 of this Charter.

<http://egov.co.pg.md.us/lis/default.asp?File=&Type=TOC>

Talbot County Charter

Council members are elected at large. Section 204.

<http://www.ecode360.com/documents/TA0795/TA0795-C.pdf>

Wicomico County Charter

Section 201. Compositions and districts.

B. Districting procedure. The boundaries of Councilmanic Districts shall be established within two years after the publication of the Decennial Census figures of the United States Bureau of the Census.²

1. Whenever district boundaries are to be established or re-established, *the County Council shall appoint*, not later than February 15 of the year prior to the year in which redistricting is to be effective, a redistricting commission. By September 1, the redistricting commission shall prepare, publish and make available to the public a plan of the proposed councilmanic districts and shall present that plan to the County Council. *The plan shall provide for councilmanic districts that are reasonably compact, contiguous and substantially equal in population.*

2. No less than fifteen (15) calendar days and no more than forty-five (45) calendar days after receiving the plan of the commission the Council shall hold a public hearing on the plan.

3. Following the public hearing, the Council may adopt the plan as presented or may make any modifications or amendments to the plan.

4. Seventy (70) days following presentation of the commission's plan, the plan as finally adopted by the County Council shall become law.³

2 Note: Original language: in 1989 and reestablished in 1992 and every 10th year thereafter

3 Note: It is the intent of the Council to establish a Redistricting Commission to initially propose a Redistricting plan. After Public Hearing the Council may adopt the Commission's Plan, or may adopt revisions. However the time at which the Redistricting Plan as finally adopted becomes law is based on the original presentation of the Commission's Plan.

<http://www.wicomicocounty.org/execPIO/CountyCharter.pdf>

III. Code Home Rule Counties:

I was not able to find online redistricting information on Allegany, Caroline, Charles, Kent, or Worcester Counties.

Queen Anne's County

Section 4-2(B). Redistricting Board.

(1) Not later than July 1, 2011, a seven-member Redistricting Board shall be appointed, composed of *three appointees of the County Commissioners, two*

appointees of the Democratic Central Committee and two appointees of the Republican Central Committee. The Redistricting Board shall convene not later than 30 days after appointment to organize and shall elect a Chairman from among its members.

(2) By April 1, 2012, the Redistricting Board shall establish tentative boundaries of the four County Commissioner Districts after due consideration and investigation within reasonable and lawful guidelines. The Redistricting Board shall set and conduct at least three public hearings in different geographical areas of the County and shall give notice of the time, date and place of such hearings at least twice in a newspaper of general circulation in Queen Anne's County.

(3) After all public hearings have been held, a final draft of the districting plan shall be completed and submitted to the County Commissioners and shall thereupon become law. After the plan becomes law, the Redistricting Board shall terminate its existence.

(4) Subsequent Redistricting Boards shall be appointed within one year after the publication of the national decennial census and the same appointing procedure outlined above shall be followed, including the timetable established herein.

<http://ecode360.com/?custId=QU1770>

IV. Commissioner Counties:

I was not able to find online redistricting information on Cecil, Garrett, Somerset, or Washington Counties.

Calvert County

§ 1-202. Authority of County Commissioners to set boundaries.

The County Commissioners may set the boundaries of the county election districts.

<http://www.co.cal.md.us/references/documents/>

Carroll County

“Starting with the 2010 election, Carroll County voters will change the way they select the Board of County Commissioners. A five-member, by-district board was approved by a 2004 referendum. Boundaries for the five districts were established by the 2008 Maryland General Assembly.”

<http://ccgoverment.carr.org/ccg/topics/redist-map/default.asp>

Frederick County

The County Commissioners are all elected at-large. § 2-2-19.

http://www.amlegal.com/frederickco_md/

St. Mary's County

Sec. 26-2. Redistricting Board.

A. Created; members; Chairman. Within one (1) year after the inauguration of the Commissioners following the 1974 general election, a Redistricting Board shall be created. The ***Board shall be composed of one (1) appointee of each County Commissioner***, and none shall be employees of the county. The Board shall convene not later than six (6) months after appointment to organize and elect a Chairman from among its members.

B. Boundaries of districts; procedure. The Redistricting Board shall establish the boundaries of the four (4) Commissioner Districts after due consideration and investigation within reasonable and lawful guidelines. The Redistricting Board shall set and conduct public hearings in each of the proposed four (4) Commissioner Districts after tentative district boundaries have been drawn and defined. Notice of public hearings giving time, date and place shall be published in two (2) county newspapers ten (10) days prior to the public hearings. After all public hearings have been held and a final draft of the redistricting plan has been completed, the Board shall submit the redistricting plan to the County Commissioners not later than eighteen (18) months from the date of their first meeting. This plan shall then become law unless the plan is set aside by a court of law with proper jurisdiction.

http://library6.municode.com/default-test/home.htm?infobase=14466&doc_action=whatsnew

My recent task was to review the recommendations of the League of Women Voters, the American Bar Association, Common Cause, the Cato Institute, and the Brookings Institution to see if there was any agreement among them about any criteria redistricting commissions should be required to use.

The following is a summary of recommendations on required criteria:

- 1) Following the Voting Rights Act is generally accepted. It is recommended as a criterion by the League of Women Voters and two divisions of Common Cause.
- 2) Promoting competitiveness is recommended as a criterion by the League of Women Voters, Common Cause Indiana, and the Brookings Institute.
- 3) Respecting political subdivisions and communities of interest is recommended as a criterion by the League of Women Voters and multiple divisions of Common Cause.
- 4) Encouraging compactness is recommended as a criterion by the League of Women Voters, multiple divisions of Common Cause, and the Cato Institute.
- 5) Respect for natural geography is recommended as a criterion by the League of Women Voters and Common Cause Florida.
- 6) That a criterion should state that districts should not be drawn to favor or disfavor political parties is recommended by Common Cause Florida and the Brookings Institute.
- 7) That a criterion should state that districts should not be drawn to favor incumbents is recommended by Common Cause Florida, Common Cause Pennsylvania, and the Brookings Institute.

The following is detail from the various organizations:

The **League of Women Voters**, in a 2006 report, recommended the following:“
Standards for Redistricting (in rank order):

- (1) Adhere to all Constitution and Voting Rights Act requirements.
- (2) Promote competitiveness and partisan fairness.
- (3) Respect political subdivisions and communities of interest.
- (4) Encourage geographical compactness and respect for natural geographical features and barriers.”

(The League of Women Voters website also discusses Maryland redistricting legislation proposed in 2005, which did not pass.)

The **American Bar Association** did not recommend any particular criteria, but said that this should be left to each state. <http://www.abanet.org/leadership/2008/midyear/>

The national level of **Common Cause** appears not to have made any recommendations on this point, but the state organizations have endorsed particular criteria, as follows:

California Common Cause:

- 1) Require that districts “be drawn according to criteria that prioritize the Voting Rights Act”,
- 2) ” Preservation of communities of interest, neighborhoods, cities, and counties.”

Common Cause Florida:

- 1) Districts should “not be drawn to favor or disfavor incumbents or political parties,”
- 2) Districts should “not be drawn to deny racial or language minorities the equal opportunity to participate in the political process and elect representatives of their choice”
- 3) Districts must be compact,
- 4) Districts must “where possible, utilize existing city, county and geographical boundaries.”

Common Cause Indiana:

- 1) compactness
- 2) contiguity
- 3) competitiveness
- 4) “preserving communities”

Common Cause Pennsylvania:

- 1) “preserving local government boundaries as well as geographic contiguity and compactness”
- 2) the use of incumbent addresses should be prohibited
- 3) the legislature must conduct public hearings

<http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=4773689>

The **Cato Institute** appears not to have a recommendation from the institute itself, but there is a paper by its senior fellow at the Cato Institute’s Center for Representative Government, which states that “The redistricting commission should be mandated to select and implement the most compact plan.

http://www.cato.org/pub_display.php?pub_id=3941

The **Brookings Institute** also appears not to have a recommendation from the institute itself, but there is a paper by a Senior Fellow in Governance Studies which recommends

- 1) following the requirements of federal law, and
- 2) minimizing partisan bias.

There is an interesting description of what this means:

“An unbiased districting plan would treat both parties roughly the same, relative to their statewide vote totals—not guaranteeing proportional representation, but creating a fair chance for both parties to convert a majority of votes into a majority of seats. And to increase competitiveness, redistricters should have to show (again, using recent election returns) that their plan creates a reasonable number of districts that are closely balanced between Democrats and Republicans.”

http://www.brookings.edu/opinions/2005/1111politics_hirsch.aspx



GO

Legislatures & Elections » Redistricting » 2009 Redistricting Commissions Table

Go 16617

Redistricting Commissions: Legislative Plans

Commissions with Primary Responsibility for Drawing a Plan

(All states not represented in this table draw legislative districts through state legislative authority)

State	Number of Members	Selection Requirements	Formation Date	Initial Deadline	Final Deadline
Alaska Alaska Const. art. 6	5	Governor appoints two; then president of the Senate appoints one; then speaker of the House appoints one; then chief justice of the Supreme Court appoints one. At least one member must be a resident of each judicial district. No member may be a public employee or official.	By September 1, 2010	30 days after census officially reported	90 days after census officially reported
Arizona Ariz. Const. art. 4, pt. 2, § 1	5	The commission on appellate court appointees creates a pool of 25 nominees, ten from each of the two largest parties and five not from either of the two largest parties. The highest ranking officer of the house appoints one from the pool, then the minority leader of the house appoints one, then the highest ranking officer of the senate appoints one, then the minority leader of the senate appoints one. These four appoint a fifth from the pool, not a member of any party already represented on the commission, as chair. If the four deadlock, the commission on appellate court appointments appoints the chair.	By February 28, 2011	None	None
Arkansas Ark. Const. 1874, art. 8	3	Commission consists of the governor, secretary of state, and the attorney general	None	By February 1, 2011	Plan becomes official 30 days after it is filed
California Article XXI	14	With the Passage of Proposition 11 in 2008, the process of redrawing California's state legislative districts was removed from state legislative authority and given to a newly established 14 member commission. The commission must include 5 Democrats, 5 Republicans, and 4 members from neither party. Government auditors	By December 31, 2010 and each year ending in the number zero thereafter	None	By September 15, 2011 and in each year ending in the number 1 thereafter

		are to select 60 registered voters from an applicant pool. Legislative leaders can reduce the pool; the auditors then are to pick eight commission members by lottery, and those commissioners pick six additional members for 14 total. For approval district boundaries need votes from three Democratic commissioners, three Republican commissioners, and three commissioners from neither party.			
Colorado Colo. Const. <u>art. V</u> , § 48	11	Legislature selects four: (speaker of the House; House minority leader; Senate majority and minority leaders; or their delegates). Governor selects three. Judiciary selects four. Maximum of four from the legislature. Each congressional district must have at least one person, but no more than four people representing it on the commission. At least one member must live west of the Continental Divide.	By August 1, 2011	90 days after the March 15, 2012 availability of the census data, or after the formation of the committee, whichever is later	
Hawaii Haw. Const. <u>art. IV</u>	9	President of the Senate selects two. Speaker of the House selects two. Minority senate party selects two. These eight select the ninth member, who is the chair. No commission member may run for the legislature in the two elections following redistricting.	By March 1, 2011	80 days after the commission forms	150 days after commission formation
Idaho Idaho Const. <u>art. III, § 2</u>	6	Leaders of two largest political parties in each house of the legislature each designate one member; chairs of the two parties whose candidates for governor received the most votes in the last election each designate one member. No member may be an elected or appointed official in the state at the time of designation.	Within 15 days after the secretary of state orders creation of a commission	None	90 days after the commission is organized, or after census data is received, whichever is later
Missouri Mo. Const. <u>art. III, § 2</u>	House: 18 Senate: 10	There are two separate redistricting committees. Governor picks one person from each list of two submitted by the two main political parties in each congressional district to form the house committee. Governor picks five people from two lists of 10 submitted by the two major political parties in the state to form the senate committee. No commission member may hold office in the legislature for four years after redistricting.	Within 60 days of the census data becoming available	Five months after the commission forms	Six months after formation

Montana Mont. Const. <u>art. V</u> , <u>§ 14</u>	5	Majority and minority leaders of both houses of the Legislature each select one member. Those four select a fifth, who is the chair. Members cannot be public officials. Members cannot run for public office in the two years after the completion of redistricting.	The legislative session before the census data is available	The commission must give the plan to the Legislature at the first regular session after its appointment	30 days after the plan is returned by the Legislature
New Jersey N.J. Const. <u>art. IV</u> , <u>§ 3</u>	10	The chairs of the two major parties each select five members. If these 10 members cannot develop a plan in the allotted time, the chief justice of the state Supreme Court will appoint an 11th member.	December 1, 2010	February 1, 2011, or one month after the census data becomes available	The initial deadline, or one month after the 11th member is picked
Ohio Ohio Const. <u>art. XI</u>	5	Board consists of the governor, auditor, secretary of state, and two people selected by the legislative leaders of each major political party.	Between August 1 and October 1, 2011	None	October 5, 2011
Pennsylvania Pa. Const. <u>art. II</u> , <u>§ 17</u>	5	Majority and minority leaders of the legislative houses each select one member. These four select a fifth to chair. If they fail to do so within 45 days, a majority of the state Supreme Court will select the fifth member. The chair cannot be a public official.	None listed	90 days after the availability of the census data or after commission formation, whichever is later	30 days after the last public exception that is filed against the initial plan
Washington Wash. Const. <u>art. II</u> , <u>§ 43</u>	5	Majority and minority leaders of the House and Senate each select one. These four select a non-voting fifth to chair the commission. If they fail to do so by January 1, 2001, the state Supreme Court will select the fifth by February 5, 2001. No commission member may be a public official.	January 31, 2011	None	January 1, 2012

Advisory Commissions

State	Number of Members	Selection Requirements	Formation Date	Initial Deadline	Final Deadline
Maine Me. Const. <u>art. IV</u> , <u>pt. 3</u> , <u>§ 1-A</u>	15	Speaker of the House appoints three. House minority leader appoints three. President of the Senate appoints two. Senate minority leader appoints two. Chairs of two major political parties, or their designees. The members from the two parties represented on the commission each appoint a public member, and the two public members choose a third public member.	Within three calendar days of convening the Legislature in 2013	The commission must submit its plan to the Legislature within 120 days after the Legislature convenes in 2013. The Legislature must enact the plan, or another plan, by a 2/3 vote of both houses within 30 days after it receives the commission's plan.	Within 60 days after the Legislature fails to meet its deadline, the supreme judicial court must adopt a plan
Vermont Vt. Stat. Ann. <u>tit. 34A</u>	5	Chief justice appoints the chair; governor appoints one member from each political party that received 25 percent of the vote in the last gubernatorial election; those parties each select one. Secretary of state is secretary of the board but does not vote. No commissioner may be a member or employee of	By July 1, 2010	April 1, 2011	May 15, 2011. Legislature must adopt the plan or a substitute at that biennial session.

the legislature.

Backup Commissions

State	Number of Members	Selection Requirements	Formation Date	Initial Deadline	Final Deadline
Connecticut Conn. Const. art. III, § 6	9	President pro tem of the Senate, Senate minority leader, speaker of the House, and House minority leader each select two; these eight must select the ninth within 30 days.	After legislature fails to meet deadline (September 15, 2011)	None	November 30, 2011
Illinois Ill. Const. art. IV, § 3	8	President of the Senate, Senate minority leader, speaker of the House, and House minority leader each select two, one of whom is a legislator and the other is not. No more than four from the same party. If the commission fails to develop a plan by August 10, 2011, the state Supreme Court selects two persons not of the same political party, one of whom is chosen by lot to be the ninth member.	July 10, 2011 (if legislature fails to meet its deadline of June 30)	None	October 5, 2011
Mississippi Miss. Const. art. 13, § 254	5	Chief justice of Supreme Court is chair; attorney general, secretary of state, speaker of the House, president pro tem of the Senate	After legislature fails to meet deadline (60 days after end of second regular session following decennial census)	None	180 days after special apportionment session adjourns
Oklahoma Okla. Const. § V-11A	3	Attorney general, superintendent of public instruction, and state treasurer	After legislature fails to meet deadline (90 days after convening first regular session following decennial census)	None	None
Texas Tex. Const. art. 3, § 28	5	Lieutenant governor, speaker of the House, attorney general, comptroller of public accounts, and commissioner of the general land office	Within 90 days after legislature fails to meet deadline (adjournment of the first regular session following decennial census)	None	60 days after formation

Other

Iowa Iowa conducts redistricting unlike any other state. The Iowa system does not put the task in the hands of a commission, but rather the legislature does vote on the plans. Nonpartisan legislative staff develop maps for the Iowa House and Senate as well as U.S. House districts without any political or election data including the addresses of incumbents. This is different from all other states. For a detailed description of the Iowa system [click here](#)

[Go to NCSL Redistricting home page](#)

This page is maintained by the Redistricting and Elections Committee for the National Conference of State Legislatures

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Memo

To: Redistricting Subcommittee

From: Karen Czapanskiy

Re: Political Science Literature about Redistricting Process

As promised, I have taken a look at what academic political scientists say about the redistricting process. I'm not a trained political scientist, but I found four articles which appear important. I've quoted the conclusion of each article in my list, below. As you'll see, there's some substantial skepticism expressed by these writers about how much improvement will occur in the redistricting process by moving from a partisan or bipartisan system to a nonpartisan system. I didn't find much about the consequences of adding criteria to the system or changing the process to make it more transparent to the public, although there's speculation that more transparency might diminish the effect of partisanship. After the list of articles, I give you a sense of how I think this material applies to Section 104, which governs the redistricting procedure under the Charter.

I. Articles

1. Gary King, Representation through Legislative Redistricting: A Stochastic Model, American Journal of Political Science, Vol. 33, pp. 787-824 (1989)

By relaxing the restrictive portions of the widely applied "uniform partisan swing" assumption, the theoretical analysis leads directly to an empirical model enabling one more reliably to estimate responsiveness and bias from a single year of electoral data. Applying this to data from seven elections in each of six states, the paper demonstrates that redistricting has effects in predicted directions in the short run: partisan gerrymandering biases the system in favor of the party in control and, by freeing up seats held by opposition party incumbents, increases the system's responsiveness. Bipartisan-controlled redistricting appears to reduce bias somewhat and dramatically to reduce responsiveness. Nonpartisan redistricting processes substantially increase responsiveness but do not have as clear an effect on bias. However, after only two elections, *prima facie* evidence for redistricting effects evaporate in most states. Finally, across every state and type of redistricting process, responsiveness declined significantly over the course of the decade. This is clear evidence that the phenomenon of "vanishing marginals," recognized first in the U.S. Congress literature, also applies to these different types of state legislative assemblies. It also strongly suggests that redistricting could not account for this pattern.

2. Harry Basehart and John Comer, Partisan and Incumbent Effects in State Legislative Redistricting, Legislative Studies Quarterly, Vol. 16, No. 1 (Feb., 1991), pp. 65-79

"The effects of reapportionment on partisan balance and on the reelection of incumbents should be expected to differ, depending on whether the reapportionment process was effectively controlled by one party or was bipartisan or nonpartisan. These

hypotheses are tested in 15 state legislatures for the post-1980 redistricting. Partisan effects are most likely to occur where the process is highly partisan. Even then, however, the partisan gains are likely to be short term and to dissipate after two or three elections. Incumbents who run appear more likely to get reelected in the years following an election, whether the process was controlled by one party or was bipartisan.”

3. Michael Lyons and Peter F. Galderisi, Incumbency, Reapportionment, and U. S. House Redistricting, Political Research Quarterly, Vol. 48, No. 4 (Dec., 1995), pp. 857-871

“In this study we examine how party controlled redistricting in 1991-92 affected the fortunes of U.S. House incumbents in the 1992 election. We explore the strategic differences between the partisan redistricting plans implemented unilaterally by one party, and the bipartisan plans implemented as the result of party compromise, arguing that effective analysis of incumbency advantage requires distinction between these two types of plans as well as distinction between the plans of states that gain seats, states that lose seats, and states that remain unchanged in reapportionment. We then assess incumbency advantage under the partisan and bipartisan plans by comparing incumbent displacement rates under these plans with the displacement rates under politically neutral nonpartisan districting plans. Our findings indicate that incumbents do indeed benefit from party controlled redistricting and more so under bipartisan than under partisan redistricting. They also indicate that the gain or loss of seats from reapportionment influences substantially the consequences of redistricting for incumbents.”

4. Alan Abramowitz, Brad Alexander and Matthew Gunning, Don't Blame Redistricting for Uncompetitive Elections, PS: Political Science and Politics Vol. 39 January 2006, pp. 87-90

“The evidence presented in this article indicates that declining competition in U.S. House elections is explained by two major factors: a shift in the partisan composition of House districts and a decline in the ability of challengers to compete financially with incumbents. Since the 1970s, and especially since 1992, there has been a substantial increase in partisan polarization among House districts. The number of marginal districts has been declining while the number of districts that are safe for one party has been increasing. Redistricting appears to have little or nothing to do with this trend: almost all of the change in district partisanship has occurred between redistricting cycles.”

II. Applying the political science research to the Montgomery County redistricting procedure.

Section 104 of the Charter establishes a commission which has the power to recommend a redistricting plan to the County Council. The recommendation is not binding on the Council, but it is the default plan if the Council adopts no other redistricting plan within 90 days after the Commission submits its recommendation.

Under Section 104, each political party that received at least 15% of the vote in the prior councilmanic election is entitled to submit a list of 8 nominees to the Council. The Council must appoint 4 of the nominees of each party to the Commission. As a practical matter, the Commission in most cycles will be bipartisan. The current County Council names one additional member of the Commission, so the Commission will be controlled by the dominant party of the current County Council in any cycle when it is bipartisan. The Charter provides no criteria for the Commission to follow, and it does not require the Commission to follow any prescribed procedures, other than the requirement that its recommendation must be submitted to the Council with an explanatory report.

In my survey of political science literature, I did not find anything concerning redistricting at the local level. The focus is congressional redistricting; some also address state legislative redistricting. Assuming that the same principles would apply to redistricting at the local level, at least some of the writers would predict that, under Section 104, redistricting by a bipartisan commission would produce a plan that would lead to bias in favor of the majority party and little responsiveness in the sense of incumbents being replaced by challengers. These effects would last for one or two elections following redistricting.

Several caveats apply to my interpretation of the political science literature. First, the Commission established under Section 104 recommends a redistricting plan; the final say is in the Council. The Council is dominated by one party and has been for a number of cycles. When redistricting is controlled by a partisan body rather than by a bipartisan party, the predicted outcome is less likely to favor incumbents, at least incumbents of the other party, which leads to a higher degree of responsiveness.

Second, Section 104 requires the Commission to produce an explanatory report. Under the Open Meetings Act, meetings called by the Commission are required to be announced to and open to the public. Where Commissions are required to have public input or otherwise respond to the public, the outcome may not be as biased in favor of the dominant political party.

Third, the Council is required to hold a public hearing about the Commission's plan. Again, public involvement may act as a constraint on partisan bias in the redistricting process.

REDISTRICTING THE COUNTY COUNCIL

A Menu of Issues and Possible Charter Changes

Some ways we might improve the process, inspire other counties, and become a national model for a more neutral redistricting:

- Specify more standards for drawing district lines
 - Set goals for balance and diversity of appointees to redistricting commission
 - Set qualifications for nomination to commission
 - Name a group, having few conflicts of interest, to make nominations in accordance with guidelines we specify.
-

1.) Specify more standards for drawing district lines

Our charter only requires that districts be compact, contiguous, and of equal population.

Possible additions are

- Do not split precincts or small municipalities
- Draw no lines to help or hurt an incumbent, political party, or group
- Do not consider past voting patterns or political affiliation of voters

2.) Set goals for balance and diversity of appointees to redistricting commission.

The County Council should make appointments that satisfy the following criteria plus the qualifications in item 3.

- a) The full commission must be broadly representative of society at large, with only a few members primarily identified with politics. Strive for fair representation of interests such as rural vs. urban, economic status, demographics, political philosophy, etc.
- b) At least one resident of each Council district will be appointed.
- c) If the current electorate feels some issue is of the greatest importance, pro and con views shall be represented.

3.) Qualifications, positive and negative, for nomination and appointment

Marc Hansen suggested we look at the qualifications for being on the Ethics Commission.

Some are, briefly:

- Reside in and be registered to vote in the County
- Do not hold or be a candidate for elective or appointive office
- Do not be a state or county employee
- Do not be an officer or employee of a political party
- Do not be a lobbyist

Additional possibilities are

- a) Do not give more than \$ XXXX in political contributions in one election cycle.
- b) Members should be well regarded by peers in their professions, community, etc.

4.) Non-politicians nominate a pool of candidates. County Council appoints from pool.

Arizona and California create such pools. In Arizona, the pool is nominated by its “Commission on Appellate Court Appointees”. California’s multi-stage process is too complex to go into.

Judges spend their careers deciding whether defendants have fully complied with various laws. Who better to decide if a pool of nominees satisfies the requirements that we could write into the charter (e. g., items 2 and 3 above)?

If there is a legal way for retired judges to perform such a service, perhaps we should ask them to either judge the pool, or actually nominate it.

5.) Give commission a suitable budget for its activities, such as technical support.

All modern redistricting commissions have to hire computer programs to draw trial maps.

CHARTER REVIEW COMMISSION
Wednesday, May 14, 2008 – 8:00 a.m.
6th Floor Conference Room
Council Office Building

Commission Members Present:

Nancy Soreng, Chair
Alice Gresham Bullock, Vice-Chair
Michael Cogan
Karen Czapanskiy
Wilbur Friedman
Mollie Habermeier
Robert Shoenberg
Judith Vandegriff
Anne Marie Vassallo
Charles Wolff

Staff:

Justina Ferber, County Council Staff
Marie Jean-Paul, County Council Staff
Marc Hansen, County Attorney's Office
Amanda Mihill, County Council Staff

Commission Chair Nancy Soreng called the meeting to order at 8:05 a.m.

I. Administrative Items

Approved the minutes from the April 9 Commission meeting. Motion made by Anne Marie Vassallo and seconded by Wilbur Friedman. Those in favor: Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Schoenberg, Nancy Soreng, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff.

II. Discussion of workplan for May 1, 2010 report

The Commission discussed the workplan as drafted by Chair Soreng and generally supported this plan. A copy of the workplan will be made part of the meeting minutes. Commission members had the following additional comments regarding the workplan.

- The Commission generally agreed to hold a public hearing on Charter issues before the Commission on October 6 and hold the October Commission meeting on October 15. Commission members requested that the news release advertising the public hearing suggest that in addition to focusing on two issues – special taxing districts and the appointment process of the Inspector General – the Commission would take testimony from speakers about other Charter-related issues. Additionally, Commission members generally requested that speakers bring copies of written testimony.
- Regarding the issue of special taxing districts, Commission members generally discussed that there were no outstanding issues for the subcommittee to research,

but members generally agreed to send a letter to municipalities and Councilmembers requesting comments and/or meetings for the September 10, 2008 meeting. Some Commission members requested information related to whether there have been instances in which communities requested that a special taxing district be created, but the Council rejected the creation of a district.

- Regarding the outstanding issues related to the Inspector General, Commission members discussed that in addition to the questions posed in the 2008 Report, potential follow-up research questions could include:
 - whether to set up additional interviews;
 - information regarding other Inspectors General offices, particularly offices in County and municipal governments;
 - how the way an office receives funding can relate to the independence of an office, possibly seeking input from the County Inspector General;
 - how the Inspector General's access to documents in state agencies (Washington Suburban Sanitary Commission, Park and Planning, Montgomery County Public Schools) would be affected if the appointment process was changed.

The Commission confirmed that their next meeting would be September 10, 2008.

The meeting was adjourned at 9:05 a.m.

CHARTER REVIEW COMMISSION
Wednesday, September 10, 2008
6th Floor Conference Room
Council Office Building

Commission Members Present:

Nancy Soreng, Chair
Alice Gresham Bullock, Vice-Chair
Karen Czapanskiy
Wilbur Friedman
Mollie Habermeier
Robert Shoenberg
Anne Marie Vassallo
Charles Wolff

Staff:

Robert Drummer, Legislative Attorney
Marie Jean-Paul, County Council Staff
Marc Hansen, County Attorney's Office

Commission Members Absent:

Michael Cogan^{*}
Judith Vandegriff

Commission Chair Nancy Soreng began the meeting at 8:10 a.m. Ms. Soreng welcomed Robert Drummer, Legislative Attorney to the meeting, in the absence of Amanda Mihill who is on maternity leave.

I. Subcommittee Reports

Inspector General

Commission member Habermeier reviewed a draft of her memo entitled "Possible Charter Amendments Regarding the Inspector General." The memo reflects the proposals the Commission discussed regarding the placement of the Office of the Inspector General in the Executive Branch. Commissioners discussed Ms. Habermeier's memo and a copy will be made a part of the minutes.

The Commission decided to focus on wrapping up its recommendations regarding the Inspector General and the Special Taxing Districts in the fall of 2008. After the public hearing on October 6, and sometime before the end of 2008, a determination which will be made on new topics, if any, to research for the 2010 report.

The subcommittee that is assigned to the Inspector General issue will interview staff of the Office of Legislative Oversight, preferably the Director, to gain insight on whether there has been any conflict of interest or duplication of effort in relation to that office and

^{*} Mr. Cogan did not attend the meeting due to illness.

the office of the IG. They will also speak to the Inspector General to discern whether the current funding process for the Office has had any impact on its independence.

Special Taxing areas

A concern was raised about the frequency with which Park and Planning staff are recommending special taxing districts to fund development projects. The subcommittee that is assigned to the special taxing districts issue will look into this and report back to the Commission at the October 15 meeting.

II. Public Forum

The Commission agreed that a second notice of the October public forum should be circulated. It was requested that this notice include a deadline for sign up. Also, the last sentence of the second paragraph should be removed and replaced with a single sentence third paragraph that says, "Comments on other Charter related issues are welcome."

The Commission had previously decided to hold a public forum on Monday, October 6, 2008 from 7:30 p.m. to 9:30 pm. in the Council Office Building 7th Floor Hearing Room. The Commissioners agreed that even if no one is signed up to testify, the hearing will still be conducted in case individuals arrive to listen, or decide at the last minute to present testimony.

Staff was asked to send Amanda's letter to municipal leaders concerning the special taxing districts issue.

III. Administrative items

Ms. Soreng asked for a motion to approve the minutes of May 14, 2008. Mr. Cogan and Ms. Vandegriff abstained from voting. The minutes were approved with the following amendments: Alice Geshman Bullock's name should be added to the list of CRC members voting for approval of the minutes.

One Commission member stated that the vacant seat was never filled when Diane Felton resigned and asked if there is a new candidate.

The Commissioners requested that a calendar of proposed meeting dates be sent to them.

The meeting was adjourned at 8:50 a.m.

**CHARTER REVIEW COMMISSION
PUBLIC FORUM
Monday, October 6, 2008
7th Floor Council Hearing Room
Council Office Building**

Commission Members Present:

Nancy Soreng, Chair
Alice Gresham Bullock, Vice-Chair
Michael Cogan
Wilbur Friedman
Mollie Habermeier
Robert Shoenberg
Judith Vandegriff
Anne Marie Vassallo
Charles Wolff

Staff:

Justina Ferber, County Council Staff
Marie Jean-Paul, County Council Staff

Commission Members Absent:

Karen Czapanskiy

Commission Chair Nancy Soreng opened the public forum at 7:40 p.m. The Commission held a public forum to seek comments on a variety of issues to determine if the current system of County Government adequately addresses the needs of County residents.

Specifically, the Commission requested community input on the following issues: (1) whether the Charter should be amended to allow for an Executive-nominated, Council-confirmed Inspector General; and (2) whether certain special taxing districts should be excluded from the Charter's limit on the growth of the property tax revenue to the rate of inflation. Comments on other Charter related issues were also welcome.

The following persons presented testimony:

1. Marvin Weinman, Montgomery County Taxpayers League
2. Jim Humphrey, Individual
3. Arnold Gordon, Civic Federation
4. Sheldon Fishman, Individual

Written testimony was also received from Peggy Dennis and Betty Petrides. All testimony, mailed and presented, will be made a part of the minutes.

The forum adjourned at 8:50 p.m.

CHARTER REVIEW COMMISSION
Wednesday, October 15, 2008
6th Floor Conference Room
Council Office Building

Commission Members Present:

Nancy Soreng, Chair
Alice Gresham Bullock, Vice-Chair
Karen Czapanskiy
Wilbur Friedman
Mollie Habermeier
Robert Shoenberg
Judith Vandegriff
Charles Wolff

Staff:

Justina Ferber, Legislative Analyst
Marie Jean-Paul, County Council Staff
Leon Rodriquez, County Attorney

Commission Members Absent:

Michael Cogan^{*}
Anne Marie Vassallo

Commission Chair Nancy Soreng began the meeting at 8:05 a.m. Ms. Soreng welcomed Leon Rodriquez, County Attorney to the meeting, in the absence of Marc Hansen who is on leave.

Discussion of Issues and Public Hearing Testimony

Inspector General

Commissioners discussed public hearing testimony received on the appointment of the Inspector General and noted that the testimony by several speakers was in favor of the current process of appointment. Chairman Soreng distributed a list of questions for discussion.

Considerations for determining whether to change the appointment process for the Inspector General of Montgomery County --

- 1) Does the current process provide sufficient independence for the IG to conduct his job according to accepted standards?
- 2) Does the current process produce usable results that are in line with the mission of the role?
- 3) Does the current process allow the office of IG to perform a function that is unique to that office and therefore is not duplicative of other County offices?

^{*} Mr. Cogan did not attend the meeting due to a family illness.

- 4) Does the current process allow sufficient access to records, personnel and other relevant sources of information for the IG to conduct the responsibilities of the office?
- 5) Does the current process have the support of the County Council?
- 6) Does the current process have the support of the County Executive?
- 7) Does the current process have the support of the Inspector General?
- 8) Does the current process have the support of the general public?
- 9) Other?

If we have sufficient information to determine that the answer to any of these questions is “no”, how will changing the appointment process in the Charter improve the situation? How would a change impact the answer to the other questions? What new considerations could arise?

Commissioners agreed that most questions could be answered yes except No. 4 and perhaps No. 6 since the Executive requested that the IG appointment process be studied by the Commission. Question No. 4 regarding access to records cannot be addressed by a Charter change, but could be addressed by a change in state law or policy.

The subcommittee that is assigned to the Inspector General issue interviewed staff of the Office of Legislative Oversight and the Inspector General. They found that the offices work together to avoid any conflict of interest or duplication of effort. The IG believes that a change in the appointment process would not necessarily improve any effect of the current funding process on the independence of the IG.

Some Commissioners felt that if the IG were appointed by the Executive that the Executive could reduce or limit funding to the IG office if the Executive were not happy with the IG.

Ms. Habermeier moved and Mr. Wolff seconded that the Commission decide not to recommend a Charter change for the appointment of the Inspector General. The motion passed unanimously. The Commission will revisit the issue again prior to publication of its 2010 report.

Special Taxing areas

Chairman Soreng distributed a list of questions for consideration of the Special Taxing Districts issue.

Considerations for determining whether Special Taxing Districts should be excluded from the Charter’s limit on growth of property tax revenue --

- 1) How much more revenue could the county have raised within the Charter Limit that could be used towards the broad, general good of county residents if Special Taxing

Districts were excluded from calculating the limit under the proposal by Glenn Orlin, and the proposal by the CRC subcommittee during the current FY?

- 2) How much revenue is currently being generated by Development Districts which are excluded from the Charter limit?
- 3) Who is involved in the proposition of, discussion of, and approval of Special Taxing District?
- 4) Have there been instances where Council has hesitated to approve Special Taxing Districts because of the impact on the Charter limit?
- 5) What is the interface or where is the balance between Special Taxing Districts, Development Districts and Impact fees, and who will be monitoring this?
- 6) According to the report from the CRC subcommittee, Planning Board Staff will be developing principles for the use of Special Taxing districts. These may include differentiation between commercial and residential property. Would such principles have an impact on our recommendation?
- 7) Other?

It was unclear how Special Taxing Districts are formed, how much they affect the budget, how much of a role Park and Planning plays and what role municipalities play. County Attorney Rodriguez offered to have one of the county attorneys brief the Commission on the issues related to Special Taxing Districts at the November 12 Commission meeting. Commissioners recommended that a glossary of terms would also be helpful.

A letter was sent to municipal leaders concerning the Special Taxing Districts issue but none have responded.

Public Forum

A request was made at the public forum for the Commission to recommend an alignment of Council Districts, School Board Districts and Regional Service Center Districts so they have the same geographic boundaries. It was agreed that this was not a Charter amendment issue.

Several requests were made to increase the number of Council districts. Commissioners agreed to discuss this issue at the December meeting.

Administrative items

The minutes of September 10 and October 6, 2008 were approved

Commissioners inquired about the appointment to fill the vacant seat of Diane Felton. The Executive's office has indicated that they are still working to fill the vacancy.

The meeting was adjourned at 9:05 a.m.

CHARTER REVIEW COMMISSION
Wednesday, November 12, 2008
6th Floor Conference Room
Council Office Building

Commission Members Present:

Nancy Soreng, Chair
Alice Gresham Bullock, Vice-Chair
Michael Cogan
Karen Czapanskiy
Wilbur Friedman
Mollie Habermeier
Robert Shoenberg
Anne Marie Vassallo
Charles Wolff

Staff:

Justina Ferber, County Council
Scott Foncannon, County Attorney's Office
Marc Hansen, County Attorney's Office
Marie Jean-Paul, County Council
Amanda Mihill, County Council
Glenn Orlin, County Council

Commission Members Absent:

Judith Vandegriff*

Commission Chair Nancy Soreng began the meeting at 8:05 a.m.

I. Special Taxing Districts

The Commission continued its discussion of whether to recommend excluding certain special taxing districts from the Charter's limit on the growth of the property tax revenue to the rate of inflation (Charter §305).

The Commission received a briefing from Marc Hansen and Scott Foncannon from the County Attorney's Office. Mr. Foncannon's presentation will be made part of the meeting minutes.

Commission members discussed development districts and learned that there are 3 development districts in the County (the County has issued bonds for 2 development districts, but not a third). Commissioners learned that development district bonds are not backed by the full faith and credit of the County or the County tax base like general obligation bonds, but are backed by the development district tax. Revenue generated from special taxing districts cannot be used to pay the general obligation debt.

Commissioners questioned whether the County can unilaterally create a special taxing district and learned that in some instances, the County can. However, Commissioners learned that development districts require approval from 80% of property owners in the proposed district, but at the time the development district is created, the developer is usually the sole owner. Commissioners also learned that the creation of a noise abatement district requires the approval of 60% of affected homeowners per the Highway Noise Abatement Policy (amended Aug. 2006).

* Ms. Vandegriff did not attend the meeting due to a family illness.

Some Commission members were concerned about how well received an amendment to remove these special taxing districts from the Charter §305 property tax cap would be by the voters, particularly in light of the recent passage of the Charter amendment to require a unanimous vote to override that cap. Commissioners discussed that the 1990 “tax revolt” that resulted in the property tax cap in §305 was primarily about residential taxes and this amendment would be primarily about commercial taxes (revenue from development district taxes are already excluded from the §305 cap). Commission members discussed that if the Commission recommended this Charter amendment, a campaign may be helpful to educate the voters on special taxing districts and how revenue generated by and for them is different than the revenue generated by residential property taxes in order to help them better understand the implications of the amendment.

Commission members requested that Council staff provide them with the following additional information:

- What is the percentage of total collections that is derived from the special taxing districts?
- What percentage of the annual budget is funded by property tax revenues?
- If special taxing districts were removed from the Charter §305 property tax cap, how would that affect property owners that are outside special taxing districts.

II. Administrative Items

A. Draft Report on the Inspector General

The Commission had before it a draft report on the issue of whether to amend the Charter to provide for an Executive-nominated, Council-confirmed Inspector General, which will be made part of the meeting minutes. Chair Soreng noted that the draft report was intended only to memorialize where the Commission stood at this point with the information that was available, but did not bar a reconsideration of this issue prior to the 2010 report.

A motion was made to amend the footnote in the draft report to read: “Regarding access to records, there was some concern that the Inspector General has been constrained in the ability to obtain information from bi-county and state agencies such as Montgomery County Public Schools, Washington Suburban Sanitary Commission and the Maryland National Capital Park and Planning Commission. However, this is not a Charter issue.” Motion made by Charles Wolff and seconded by Alice Gresham Bullock.

A substitute motion was made to delete the last sentence in the footnote that reads “The solution to this problem requires a change in State law.” Substitute motion made by Michael Cogan and seconded by Mollie Habermeier.

In favor: Michael Cogan, Wilbur Friedman, Mollie Habermeier (3)

Against: Alice Gresham Bullock, Karen Czapanskiy, Robert Shoenberg, Nancy Soreng, Anne Marie Vassallo, Charles Wolff (6)

Adopted the original motion.

In favor: Alice Gresham Bullock, Karen Czapanskiy, Wilbur Friedman, Robert Shoenberg, Nancy Soreng, Anne Marie Vassallo, Charles Wolff (7)

Abstain: Michael Cogan, Mollie Habermeier (2)

B. Approval of October 15 minutes

Approved the October 15 minutes with the following corrections:

- Replace the sentence in the second paragraph on Page 2 that reads “The IG did not believe that the current funding process for his Office has had any impact on its independence” with “The IG believes that a change in the appointment process would not necessarily improve any effect of the current funding process on the independence of the IG.”
- Ensure that the minutes do not contain gender-specific pronouns.

In favor: Alice Gresham Bullock, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Anne Marie Vassallo, Charles Wolff (8)

Abstain: Michael Cogan (1)

Mr. Cogan requested that the minutes reflect when a Commission members misses a meeting due to illness or other reason.

The meeting was adjourned at 9:40 a.m.

CHARTER REVIEW COMMISSION
Wednesday, December 10, 2008
6th Floor Conference Room
Council Office Building

Commission Members Present:

Nancy Soreng, Chair
Michael Cogan
Karen Czapanskiy
Wilbur Friedman
Mollie Habermeier
Robert Shoenberg
Judith Vandegriff
Anne Marie Vassallo
Charles Wolff

Staff:

Justina Ferber, County Council
Marc Hansen, County Attorney's Office
Marie Jean-Paul, County Council
Amanda Mihill, County Council
Glenn Orlin, County Council

Guests:

Jennifer Barrett, County Department of Finance
Mike Coveyou, County Department of Finance
Brady Goldsmith, County Office of
Management and Budget

Commission Members Absent:

Alice Gresham Bullock, Vice-Chair

Commission Chair Nancy Soreng began the meeting at 8:07 a.m.

I. Special Taxing Districts

Mollie Habermeier reviewed some hypothetical calculations that she had shared with the Commissioners in a memorandum dated December 7, 2008. Commissioners requested clarification of her calculations from Ms. Habermeier and also requested comment on them from Glenn Orlin, Deputy Council Staff Director. The Commissioners felt that they needed additional background in order to fully understand the impact on the tax rate for residential property tax payers if certain special taxing districts were excluded from the §305 limits.

Commissioners discussed that if the Commission makes a recommendation to exclude certain special taxing districts from the Charter §305 limit, there could be a potential for a one-time increase in the property tax rate the first year the special taxing district are exempted. Commissioners generally agreed that this potential one time increase should be addressed during the drafting of the language for any Commission recommendation.

The Commission heard from Jennifer Barrett, Director of the County's Department of Finance, who urged the Commission to provide the Department an opportunity to comment on the special taxing district proposal. Ms. Barrett suggested that once Commissioners have formed a recommendation on this issue, the Commission should work with the Department to ensure that the language of any recommended amendment reflects the intent of the Commission. Specifically, Ms. Barrett suggested that the Commission let the Department walk through the numbers to ensure that the Commission will get the result that it intended.

Ms. Soreng thanked the Department for attending the meeting and providing input. She reviewed the time table for the decision making process of the Commission and stated that they would not be making a final recommendation to the Council until they prepare their draft report in April of 2010. She requested that the Department address the Commission at the January 14 meeting and comment on the following issues raised:

- How should the special taxing districts intended to be excluded from the §305 limit be defined?
- The special taxing district sub-committee recommended that if the small geographic special taxing districts are excluded from the §305 language, the amount of funding that could be used for this purpose should be limited. The 2008 Charter Review Commission Report identified that the limitation could be stated in terms of either the county-wide *ad valorem* property tax collections or the total assessable land value of the County. The sub-committee recommended excluding revenues from special taxing districts up to an amount equivalent to 2-2.5% of real property tax collections from the §305 limit. In the Department's view, what should this limit be?
- How should these special taxing districts be created?
- How would the Department recommend addressing the potential impact on the tax rate during the first year that special taxing districts would be exempted from section 305?

II. Administrative Items

Commissioners suggested that Ms. Soreng send a letter to County Executive Leggett noting that the Commission has been without its 11th member for 9 months and urging the Executive to appoint a replacement, particularly since the Commission will begin studying new issues.

A. Approval of November 12 minutes

The Commission approved the November 12 minutes. Motion made by Wilbur Friedman and seconded by Anne Marie Vassallo.

In favor: Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Anne Marie Vassallo, Charles Wolff (7)

B. Discussion of future workplan

Commissioners discussed the future workplan of the Commission.

The Commission agreed to continue studying whether special taxing districts that cover a limited geographic area should be excluded from the limitation on property tax revenue growth. Motion made by Wilbur Friedman and seconded by Anne Marie Vassallo.

In favor: Michael Cogan, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff (9)

Many Commissioners were concerned over the recent passage of a Charter amendment that increased from 7 to 9 the number of Councilmember votes needed to exceed the §305 property

tax revenue limit, which effectively limits property tax increases to the rate of growth plus inflation. Therefore, Commissioners agreed to study alternatives to tying the limit on property tax increases to something other than a simple majority Council vote. Motion made by Robert Shoenberg and seconded by Michael Cogan.

In favor: Michael Cogan, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier,
Robert Shoenberg, Judith Vandegriff (6)

Against: Anne Marie Vassallo (1)

Abstain: Nancy Soreng, Charles Wolff (2)

Commissioners generally agreed to further discuss the scope of this workplan issue at the January meeting.

The meeting was adjourned at 9:32 a.m.

CHARTER REVIEW COMMISSION
Wednesday, February 11, 2009
6th Floor Conference Room
Council Office Building

Commission Members Present:

Nancy Soreng, Chair
Alice Gresham Bullock, Vice-Chair
Karen Czapanskiy
Wilbur Friedman
Mollie Habermeier
Judith Vandegriff
Anne Marie Vassallo
Charles Wolff

Staff:

Justina Ferber, County Council
Marc Hansen, County Attorney's Office
Marie Jean-Paul, County Council
Amanda Mihill, County Council
Glenn Orlin, County Council

Guests:

Jennifer Barrett, County Department of Finance
Mike Coveyou, County Department of Finance

Commission Members Absent:

Michael Cogan*
Robert Shoenberg

Commission Chair Nancy Soreng began the meeting at 8:07 a.m.

I. Meeting with the Department of Finance

The Commission met with Jennifer Barrett, Director of the County's Department of Finance in a follow-up conversation about the potential of excluding certain special taxing districts from the §305 limits. A copy of Ms. Barrett's presentation to the Committee will be made part of the minutes.

II. Administrative Items

A. Approval of December 10 minutes

The Commission approved the December 10 minutes. Motion made by Karen Czapanskiy and seconded by Wilbur Friedman.

In favor: Alice Gresham Bullock, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Anne Marie Vassallo, Charles Wolff (8)

B. Discussion of future workplan

Commissioners discussed the future workplan of the Commission. In order to look at the larger question of whether §305, as currently written, provides the best framework for ensuring fiscal responsibility and adequate resources to meet County obligations, Commissioners expressed an interest in meeting with Nick Johnson from the Center on Budget and Policy Priorities,

* Mr. Cogan did not attend the meeting due to a family illness.

Councilmember Duchy Trachtenberg, Chair of the Council's Management and Fiscal Policy Committee, and Neil Bergsman from the Maryland Budget and Tax Policy Institute at future meetings. The Commission will continue to evaluate the question of whether Special Taxing Districts should be excluded from Charter limitations in this larger context.

If it can be arranged, the Commission will meet with Mr. Johnson at their March meeting.

The meeting was adjourned at 9:30 a.m.

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CHARTER REVIEW COMMISSION

Discussion of Special Taxing Districts -Department of Finance

- A. (originally considered) (5) any special taxing district limited to a certain geographic area if the aggregate assessable base of all special taxing districts exempted under this clause does not exceed ten percent of the total County assessable base,
- B. (GO 717108 Recommendation)(5) any special taxing district that covers a limited geographic area, such as an urban district, parking lot district, or noise abatement district, if the aggregate assessable base of all exempted special taxing districts does not exceed ten percent of the total County assessable base,
- C. (CRC Subcommittee) (5) any special taxing district that covers a limited geographic area, such as an urban district, parking lot district, or noise abatement district, if the aggregate real property tax collections of all exempted special taxing districts do not exceed two-and-a-half percent of the total County real property tax collections,
- D. (GO 7/22/08 Recommendation)(5) any special tax levied only in a special taxing district created by County law to provide specific public services in a limited geographic area if the aggregate assessable base of all special taxing districts subject to this clause does not exceed ten percent of the total County assessable base,

Technical Issues

- Definition of a special taxing district
 - o Term "special taxing district" would include several County wide districts such as Mass Transit, Fire, ALARF, and Storm Drain
 - o Limiting to less than County would still include Recreation, Metropolitan. and P&P Administration
 - o Precise language would be needed to define exactly which districts are exempted
 - o Target districts seem to be PLD, Urban, NAD, future small districts.
 - o There may be no limitation that would be viewed as adequately protecting property Owners
 - o As drafted, problematic implementation
- Limit on amount of funding
 - o Finance prefers revenue limiting approach, but calculation process would need to be carefully legally defined/drafted
 - o Still may not be viewed as adequate protection for all property owners
- How should exempted districts be created?
 - o Like the only currently exempted district -voluntarily -process initiated by property owners
- How handle first year benefit?
 - o Apply only to future districts
 - o Glenn noted that "if adopted, the base for the FY2010 FIT calculation would be the FY2009 total ad valorem tax collections MINUS the special district collections in FY2009"
 - o Wouldn't language have to be in Charter amendment?
 - o Have not seen anything drafted to address, would add additional complication
- Complex Issue -Does not meet LWV "simplified language" test

Policy Issues

- Passage of recent charter amendment sent strong message
- What is "spirit" of Section 305
- Discussion regarding "optional property taxes"
- Tough choices argument, single purpose override

CHARTER REVIEW COMMISSION

Wednesday, March 11, 2009

6th Floor Conference Room

Council Office Building

Commission Members Present:

Alice Gresham Bullock, Vice-Chair

Karen Czapanskiy

Wilbur Friedman

Mollie Habermeier

Robert Shoenberg

Judith Vandegriff

Anne Marie Vassallo

Charles Wolff

Staff:

Justina Ferber, County Council

Marc Hansen, County Attorney's Office

Marie Jean-Paul, County Council

Amanda Mihill, County Council

Guests:

Nick Johnson, Director, State Fiscal Project,

Center on Budget and Policy Priorities

Phil Oliff, Center on Budget and Policy
Priorities

Commission Members Absent:

Michael Cogan*

Nancy Soreng, Chair*

Commission Vice-Chair Alice Gresham Bullock began the meeting at 8:05 a.m.

I. Meeting with the Department of Finance

The Commission met Nick Johnson and Phil Oliff from the Center on Budget and Policy Priorities to discuss tax and expenditure limits in other jurisdictions, particularly at the state level because that is the Center's expertise. Commissioners learned that, compared with other states, few have the limits on property tax collection that Montgomery County has. Mr. Johnson noted that there are a few states that limit property tax collection increases to a certain percentage or to the rate of inflation. Other states have caps on rates, the overall budget, or on assessments (e.g., homestead tax credit).

Mr. Johnson noted that there are at least two points of view related to these types of caps. One view asserts that when a government limits revenues one way (e.g., tax caps), it is usually made up another way. A second point of view associates tax caps with negative impacts (for instance, important government functions can go unfunded).

Regarding override provisions, Mr. Johnson noted 2 ways that a cap can be overridden. First, lawmakers can use the referendum process, which typically requires a majority of the legislators to vote to put the measure on the ballot. Second, Mr. Johnson noted that there are other legislative body overrides. To exercise the override can require a supermajority, which is typically 3/5 or 2/3 vote. Mr. Johnson did not have an example of a jurisdiction that require a unanimous vote to override the tax cap (as is now required in the County). Mr. Johnson noted that the closest he is aware of is in Rhode Island, which requires a 4/5 vote.

Mr. Johnson discussed whether other jurisdictions have exemptions to the tax limit and noted that exemptions are relatively common on the property tax level and sometimes related to bonds. However, Mr. Johnson noted that once a restriction is in place, it is difficult to get rid of that

* Absent due to illness.

restriction. Mr. Johnson also noted that if too many items are excluded from a cap, there really is no cap.

In discussing the role of government in a recession, Mr. Johnson noted that a strong property tax is the best thing for the local government and can be stabilizing because it is less volatile than other types of taxes, including sales taxes. Mr. Johnson stated that in a recession, the best thing is to have a healthy reserve built up and noted that most states have a rainy day fund.

In response to a Commissioner question, Mr. Johnson stated that $\frac{3}{4}$ of states have some property tax cap, but the cap varies, and $\frac{2}{3}$ of states have a loose or no tax cap.

II. Administrative Items

A. Approval of February 11 minutes

The Commission approved the February 11 minutes. Motion made by Karen Czapanskiy and seconded by Anne Marie Vassallo.

In favor: Alice Gresham Bullock, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff (8)

B. Discussion of future workplan

The Commission discussed that if it can be arranged, they will meet with Councilmember Duchy Trachtenberg in April and a representative from Park and Planning in May.

The meeting was adjourned at 9:14 a.m.

CHARTER REVIEW COMMISSION
Wednesday, April 8, 2009
6th Floor Conference Room
Council Office Building

Commission Members Present:

Nancy Soreng, Chair
Michael Cogan
Karen Czapanskiy
Wilbur Friedman
Mollie Habermeier
Robert Shoenberg
Moshe Starkman
Judith Vandegriff
Anne Marie Vassallo
Charles Wolff

Staff:

Mike Faden, County Council
Justina Ferber, County Council
Marc Hansen, County Attorney's Office
Marie Jean-Paul, County Council
Amanda Mihill, County Council

Guests:

Dale Tibbits, Councilmember Marc Elrich
Jacob Sesker, Maryland-National Capital Park
and Planning Commission
Piera Weiss, M-NCPPC

Commission Members Absent:

Alice Gresham Bullock, Vice-Chair

Commission Chair Nancy Soreng began the meeting at 8:06 a.m.

I. Opening Remarks/Introduction of New Commission Member

Ms. Soreng opened the meeting by welcoming Moshe Starkman, who was appointed and confirmed to the Charter Review Commission on March 17.

II. Meeting with Maryland-National Capital Park and Planning Commission Staff

The Commission met with Jacob Sesker and Pierra Weiss from the Maryland-National Capital Park and Planning Commission to discuss the future use of special taxing districts in master and sector plans recommended by the County Planning Board.

In discussing the potential use of special taxing districts in the White Flint Sector Plan, Mr. Sesker noted that the Plan involves a lot of infrastructure costs and charging an ad valorem tax was considered as a tool to pay for the infrastructure needs. Mr. Sesker noted that the interest in using special taxing districts has increased for a variety of reasons, including:

- Park and Planning is more interested in creating master plans that are more “implementable”, which means considering the infrastructure costs and how to pay for implementation.
- Development districts are better suited for green field development (1 owner). Parking lot districts are a tool best suited for locations in which the public sector owns land. In redevelopment plans where there is diverse ownership and little or no public land for parking lots, special taxing districts may be the most useful infrastructure finance tool. .

- Some other measures, such as impact taxes, do not raise adequate revenue to pay for all of the necessary improvements.
- Some measures, such as Urban Service Districts, are aimed more toward financing safety measures and clean streets, not infrastructure costs of the magnitude required to implement a master or sector plan.

Mr. Sesker also noted that businesses and residents may increasingly become unwilling to be taxed at a higher level if they will lose control over how the increased revenue is spent.

Mr. Sesker noted that he has been advised that Charter-related issues may limit the use of special taxing districts.

Responding to questions from Commissioners regarding whether the Council would need owner consent to establish a special taxing district, Mr. Hansen noted that it depended on the type of special taxing district the Council wants to create. Under current law, the creation of a development district requires the consent of a certain percentage of property owners that would be in the development district. However, other types of special taxing districts do not require a percentage of consenting owners. Mr. Hansen explained that the Council derives its special taxing authority from 2 sources: (1) the Home Rule and Express Powers Act, which allows for the creation of special taxing districts; and (2) State law, which allows the County to impose taxes similar to the General Assembly, with certain exceptions. Mr. Hansen made clear that only the Council or the General Assembly can tax its residents; M-NCPPC does not have that authority.

Dale Tibbits, Confidential Aide to Councilmember Marc Elrich, informed the Commission that the Councilmember was interested in using special taxing districts as a financing mechanism for the Bus Rapid Transit system. Commissioners were interested in inviting Councilmember Elrich to the next Commission meeting to discuss this idea.

Commission members requested a written memorandum from M-NCPPC about the future use of special taxing districts and what changes to the Charter may be needed. Commissioners requested that Council staff distribute this memorandum to Councilmembers Trachtenberg and Elrich when received so that the Councilmembers can respond to the memorandum when they meet with the Commission.

Some Commissioners made the following suggestions for Commission members to keep in mind when discussing this issue and potential Charter amendments:

- The Commission should keep in mind how the concept of excluding special taxing districts from the Charter limit should be implemented.
- How should “special taxing districts” be defined?
- How prescriptive should any potential language be?
- Whatever potential language the Commission may recommend, the language should be clear regarding what is or is not under the Charter §305 cap on property tax revenue.

Commission members requested information on the current County laws regarding creating certain special taxing districts. Mr. Hansen offered to submit to the Commission a list of common characteristics of special taxing districts.

IV. Administrative Items

A. Approval of March 11 minutes

Mr. Cogan requested that the March 11 minutes reflect that his absence was due to illness. The Commission approved the March 11 minutes. Motion made by Wilbur Friedman and seconded by Anne Marie Vassallo.

In favor: Michael Cogan, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Moshe Starkman, Anne Marie Vassallo, Charles Wolff (9)

Abstain: Judith Vandegriff (1)

B. Discussion of future workplan

Commission members decided to continue their discussion of special taxing districts at their meeting in June, with the goal of coming to a preliminary decision on this issue. The Commission generally agreed not to meet in July or August.

The meeting was adjourned at 9:30 a.m.

CHARTER REVIEW COMMISSION
Wednesday, May 13, 2009
6th Floor Conference Room
Council Office Building

Commission Members Present:

Nancy Soreng, Chair
Alice Gresham Bullock, Vice-Chair
Michael Cogan
Karen Czapanskiy
Wilbur Friedman
Mollie Habermeier
Robert Shoenberg
Moshe Starkman
Judith Vandegriff
Anne Marie Vassallo
Charles Wolff

Staff:

Mike Faden, County Council
Justina Ferber, County Council
Marc Hansen, County Attorney's Office
Marie Jean-Paul, County Council
Amanda Mihill, County Council
Glenn Orlin, County Council

Guests:

Councilmember Marc Elrich
Councilmember Duchy Trachtenberg
Dale Tibbits, Office of Councilmember Elrich

Commission Chair Nancy Soreng began the meeting at 8:05 a.m.

I. Meeting with Councilmember Marc Elrich

The Commission met with Councilmember Elrich to discuss Mr. Elrich's proposal for a County bus rapid transit system. Mr. Elrich estimated that it would cost \$1 to \$1.5 billion to build this system, but noted that it is difficult to find creative financing mechanisms to use without running afoul of the property tax limit in Charter §305. Councilmember Elrich noted that flexibility in financing projects is important.

Councilmember Elrich described his vision for a bus rapid transit system, noting that the only way people can get across the county is by car and that the least expensive way to move people is by a BRT system. Because the project would be expensive, it is unlikely to be done in the County's Capital Improvements Program. Councilmember Elrich floated the following ideas to provide funding for a BRT system:

- Charging different commercial and residential property tax rates and dedicating the extra commercial tax revenue to transportation projects. Councilmember Elrich noted that Northern Virginia charges different tax rates, but stated that the County is prevented from doing so by state law.
- Establish a special taxing district approximately ¼ or ½ mile around each proposed station. Councilmember Elrich noted that this option would have a minimal impact in terms of rate, but would be able to fund a large project.
- Establish a development district, which may be problematic to apply in this situation

Councilmember Elrich expressed support for the concept of removing special taxing districts from the Charter §305 property tax limit because it would provide the County with flexibility in funding projects

and the revenue will go to a dedicated purpose. Special taxing districts are limited in geographic scope and do not affect all property taxpayers.

II. Meeting with Councilmember Duchy Trachtenberg

The Commission met with Councilmember Trachtenberg to discuss her and the Council's views on the issues of whether to exclude certain special taxing districts from the §305 property tax limit and alternatives to tying the property tax limit to the rate of inflation. Councilmember Trachtenberg noted that given where the County is financially, there is a recognition that creative fiscal planning tools are necessary to support infrastructure. Ms. Trachtenberg noted that the Council hasn't formulated a position on this issue and that there is mixed community opinion regarding special assessments and development districts. Ms. Trachtenberg argued that flexibility in financing is critical, but stated that one size does not fit all when it comes to these financing issues.

III. Open Discussion of Study Issues

Commission members discussed potential alternatives to excluding special taxing districts from the Charter §305 provisions. Commission members generally agreed to invite Tim Firestine, the County Chief Administrative Officer, to the June meeting to discuss options to give the County flexibility for financing projects. In particular, the Commission would like Mr. Firestine to address the following questions:

A lot of people believe that there is a need to loosen Charter §305 to provide flexibility to finance projects. Keeping in mind the larger picture of the County's fiscal policy for the long term future, what options make sense? Options that have been discussed are removing certain special taxing districts from the §305 cap and removing the cap in general. In the absence of a cap, what would you suggest?

IV. Approval of April 8 minutes

The Commission approved the April 8 minutes with the following amendment: replace the phrase "like the General Assembly" in the third full paragraph on page 2 with "similar to the General Assembly". Motion made by Wilbur Friedman and seconded by Karen Czapanskiy.

In favor: Alice Gresham Bullock, Michael Cogan, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Moshe Starkman, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff (11)

The meeting was adjourned at 9:35 a.m.

CHARTER REVIEW COMMISSION

Wednesday, June 10, 2009

6th Floor Conference Room

Council Office Building

Commission Members Present:

Nancy Soreng, Chair

Michael Cogan

Karen Czapanskiy

Wilbur Friedman

Mollie Habermeier

Robert Shoenberg

Moshe Starkman

Judith Vandegriff

Anne Marie Vassallo

Charles Wolff

Staff:

Justina Ferber, County Council

Marc Hansen, County Attorney's Office

Marie Jean-Paul, County Council

Amanda Mihill, County Council

Glenn Orlin, County Council

Absent:

Alice Gresham Bullock, Vice-Chair

Commission Chair Nancy Soreng began the meeting at 8:06 a.m.

I. Open Discussion of Study Issues – Special Taxing Districts

The Commission broadly discussed with Marc Hansen the differences between a special benefit assessment and a tax. Mr. Hansen explained that a true tax does not have to benefit those being taxed, but with a special benefits assessment there must be a nexus between what the owner is paying and the benefit received.

Some Commission members expressed an interest in fostering communication between the Council, Executive Branch, and Park and Planning and suggested inviting representatives from these entities to a meeting to discuss changes to the Charter that would facilitate accomplishing future County goals.

Wilbur Friedman moved that the Commission endorse exempting special taxing districts, fire station districts, and the potential bus rapid transit district from the tax cap in Charter §305. Mr. Friedman withdrew his motion.

Commission members generally discussed that Ms. Soreng would contact Council President Andrews and Management and Fiscal Policy (MFP) Chair Duchy Trachtenberg to discuss whether they would be interested in the Commission fostering a meeting between the Council, Executive Branch, and Park and Planning on this issue. Commission members also requested that Ms. Soreng ask Ms. Trachtenberg about the timing and scope of the proposed MFP meeting regarding funding.

II. Approval of May 13 minutes

The Commission approved the May 13 minutes. Motion made by Wilbur Friedman and seconded by Anne Marie Vassallo.

In favor: Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Nancy Soreng,
Moshe Starkman, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff (8)

The meeting was adjourned at 9:27 a.m.

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CHARTER REVIEW COMMISSION
Wednesday, September 9, 2009
6th Floor Conference Room
Council Office Building

Commission Members Present:

Nancy Soreng, Chair
Michael Cogan
Wilbur Friedman
Mollie Habermeier
Robert Shoenberg
Moshe Starkman
Judith Vandegriff
Anne Marie Vassallo

Staff:

Mike Faden, County Council
Justina Ferber, County Council
Marc Hansen, County Attorney's Office
Marie Jean-Paul, County Council
Amanda Mihill, County Council

Guests:

Dale Tibbitts, Office of Councilmember Elrich

Absent:

Alice Gresham Bullock, Vice-Chair*
Karen Czapanskiy
Charles Wolff

Commission Chair Nancy Soreng began the meeting at 8:10 a.m.

I. Approval of Minutes

The Commission approved the June 10 minutes. Motion made by Judith Vandegriff and seconded by Wilbur Friedman.

In favor: Michael Cogan, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg,
Nancy Soreng, Moshe Starkman, Judith Vandegriff, Anne Marie Vassallo (8)

II. Report by Chair Soreng on meetings with Councilmembers Trachtenberg and Andrews

Chair Soreng reported to the Commission that she met with both Councilmember Trachtenberg and Council President Andrews regarding the potential meeting between the Legislative Branch, Executive Branch, and Parking and Planning posed at the June 10 Commission meeting. Ms. Soreng reported that Councilmember Trachtenberg thanked the Commission for its work and assured Ms. Soreng that these parties are communicating regarding these issues, particularly as it relates to the Growth Policy discussions that the Management and Fiscal Policy Committee will be having. Ms. Trachtenberg also cautioned that the Commission's role is that of advisor to the Council and Executive, not to facilitate meetings.

Ms. Soreng reported that Mr. Andrews also assured that the Council is engaged in these discussions, particularly the Management and Fiscal Policy, Transportation, Infrastructure, Energy & Environment, and Planning, Housing, and Economic Development Committees. Mr. Andrews

* Could not attend due to a death in the family.

expressed similar concerns that the Commission's role is to engage in independent fact-finding, not facilitate meetings and was concerned that such meetings would set a bad precedent.

III. Open Discussion of Study Issues

Ms. Soreng shared with the Commission the results of 2 Charter ballot question from 1998. The first question, which would have excluded special taxing districts from the §305 Charter limit, was rejected by voters 50.1% to 49.84%. Another ballot question, which would have replaced the supermajority requirements in §305 with simple majority requirements, was defeated by voters 57.5% to 42%. In the ensuing discussion, Mr. Cogan noted that a good indicator of a question's complexity would be to know how many voters voted on the questions.

The Commission reviewed a memorandum submitted by Mr. Friedman that advocated the following Charter amendments:

- Provide that if the Council funds additional fire stations, the money expended on this project would not be subject to the limits of §305.
- Provide that if the Council funds constructing an express bus service, the money expended on this project would not be subject to the limits of §305.
- Require the County to set aside money into a fund in more financially sound times so that it can be used in difficult financial times.

Responding to Commissioner questions, Mr. Hansen explained that Charter §310 limits the amount of surplus that can be budgeted. When faced with too much surplus, the County can either return it to the taxpayers or spend it through supplemental appropriations. The Commission discussed that one alternative the Commission could consider is amending §310 to allow the County to set aside additional surplus to be used when revenue collections are below what was anticipated when the budget was adopted. Commissioners generally discussed some benefits and drawbacks of this proposal.

The Commission took straw votes on the following question: should the Commission recommend excluding special taxing districts from the property tax limits of Charter §305.

In favor: Robert Shoenberg, Nancy Soreng (2)

Against: Michael Cogan, Wilbur Friedman, Mollie Habermeier, Judith Vandegriff,
Anne Marie Vassallo (5)

Abstain: Moshe Starkman (1)

In light of the Commission's decision to recommend not excluding special taxing districts from the §305 limit, Ms. Soreng requested that those members who voted against excluding those districts from the §305 limit to e-mail her with reasons why they did not support excluding those districts.

The Commission voted to consider issues raised by Mr. Friedman's recommendations regarding §310, including whether to recommend an amendment to give the County the option to set aside funding above the 5% limit to be used when revenue collections do not meet revenue projections.

In favor: Michael Cogan, Wilbur Friedman, Mollie Habermeier, Nancy Soreng, Moshe Starkman, Judith Vandegriff, Anne Marie Vassallo, (7)
Against: Robert Shoenberg (1)

In studying the issues raised by Mr. Friedman's memorandum and §310, the Commission requested to meet with Tim Firestine, Jennifer Barrett, Joe Beach, Steve Farber, and a representative from the Maryland Association of Counties or the National Association of Counties. The Commission was interested in understanding how revenue estimates are derived and what, if any, similar options other jurisdictions have.

The Commission discussed that November's meeting is currently scheduled for November 11, which is a County holiday. Therefore, they agreed to meet on November 18 instead of November 11.

The meeting was adjourned at 9:27 a.m.

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CHARTER REVIEW COMMISSION
Wednesday, October 14, 2009
6th Floor Conference Room
Council Office Building

Commission Members Present:

Nancy Soreng, Chair
Michael Cogan
Karen Czapanskiy
Wilbur Friedman
Mollie Habermeier
Robert Shoenberg
Moshe Starkman
Judith Vandegriff
Charles Wolff

Staff:

Justina Ferber, County Council
Marie Jean-Paul, County Council
Amanda Mihill, County Council
Leon Rodriquez, County Attorney

Absent:

Alice Gresham Bullock, Vice-Chair
Anne Marie Vassallo

Commission Chair Nancy Soreng began the meeting at 8:14 a.m.

I. Approval of Minutes and General Comments

The Commission approved the September 9 minutes. Motion made by Judith Vandegriff and seconded by Wilbur Friedman.

In favor: Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Moshe Starkman, Judith Vandegriff, Charles Wolff (8)

Commission members requested that a press release be issued soliciting public comments on the proposal to amend Charter §310 to allow the County to set aside funding above the 5% limit to be used when revenue collections do not meet revenue projections. Commission members also requested Council staff to contact Councilmembers to see if they had any comments regarding this proposal. Finally, Commission members requested the Chair to send a letter to the Maryland Association of Counties to understand if there are other similar limitations in other jurisdictions.

II. Meeting with Timothy Firestine

The Commission met with Timothy Firestine, Chief Administrative Officer to discuss the proposal to amend Charter §310 to allow the County to set aside funding above the 5% limit to be used when revenue collections do not meet revenue projections. Mr. Firestine noted that there are basically 2 ways the County reaches the 5% limit identified in §310: by an increase in revenue or departments spending less. Mr. Firestine noted that when the County surplus exceeds 5%, those funds are typically used to fund the next year's budget.

Mr. Firestine reviewed with the Commission the County's Revenue Stabilization Fund, which is an emergency fund that was established in the 1990s to support government appropriations that become unfunded. The law requires that if the County receives more revenue than what was projected from certain economically sensitive sources (income tax, real property transfer tax, recordation tax, and investment income), a certain percentage must be put into this Fund, up to the Fund cap. Mr. Firestine noted that this fund typically comprises about 3% of reserves.

Mr. Firestine explained that State law prohibits the use of funds in the Revenue Stabilization Fund unless appropriations become unfunded. County law requires that 2 of the following 3 criteria be met before Revenue Stabilization Fund money can be used: General Fund revenues are estimated to drop 2% below original projections, there is a 6-month decline in employment, or there is a 3-month decline in leading economic indicators. Mr. Firestine noted that the Council can waive these requirements, with the exception of the State requirement that appropriations become unfunded.

Addressing the Commission's specific suggestion to allow the County to set aside funds to be used at a later time, Mr. Firestine suggested that the concept does not reflect the way that budgeting typically works and suggested that it would be difficult for elected officials to set aside money and not use it. Mr. Firestine opined that the issue the Commission sought to address was not necessarily a Charter issue, but one of County policy and noted that the County could change the requirements regarding setting aside reserve funding. Mr. Firestine explained that the County's reserve policy is 6% of resources, including the Revenue Stabilization Fund. Mr. Firestine noted that there is generally 8% market volatility and opined that the County should have an 8% reserve policy (3% for the Revenue Stabilization Fund and 5% general reserve).

Regarding the issue of whether the Charter should be amended to exclude special taxing districts from the §305 limits, Mr. Firestine noted that the purpose of the §305 limit was to control the tax burden and if the Charter specifies a limit, the special taxing districts should be part of that limit. Mr. Firestine further noted that the Council could go above the limit if it thought necessary.

The Commission briefly discussed with Mr. Firestine the recent Charter amendment that raised from 7 to 9 the number of Councilmember votes that are required to override the §305 limit. Responding to Commissioner questions, Mr. Firestine stated that in his opinion, it was good when it required only 7, but became absurd when the Charter was changed to require 9.

The meeting was adjourned at 9:34 a.m.

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CHARTER REVIEW COMMISSION
Wednesday, November 18, 2009
6th Floor Conference Room
Council Office Building

Commission Members Present:

Nancy Soreng, Chair
Michael Cogan
Karen Czapanskiy
Wilbur Friedman
Mollie Habermeier
Robert Shoenberg
Moshe Starkman
Judith Vandegriff
Anne Marie Vassallo
Charles Wolff

Staff:

Justina Ferber, County Council
Marie Jean-Paul, County Council
Marc Hansen, County Attorney's Office
Amanda Mihill, County Council

Guests:

Dale Tibbits, Office of Councilmember Elrich

Absent:

Alice Gresham Bullock, Vice-Chair

Commission Chair Nancy Soreng began the meeting at 8:12 a.m.

I. Charter Section 310

The Commission discussed the meeting they had with Chief Administrative Officer Timothy Firestine in October regarding a proposal to amend Charter §310 to allow the County to set aside funding above the 5% limit to be used when revenue collections do not meet revenue projections.

The Commission decided not to pursue this issue and recommended that the 2010 Report reflect that the Commission considered the issue, discussed it with certain County personnel, and decided not to pursue it. Motion made by Michael Cogan and seconded by Wilbur Friedman.

In favor: Michael Cogan, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg,
Nancy Soreng, Moshe Starkman, Judith Vandegriff, Anne Marie Vassallo (8)

Oppose: Charles Wolff (1)

II. Special Taxing Districts

The Commission received a memorandum from Commissioner Friedman indicating that he was interested in pursuing the issue of whether to exclude special taxing districts from the Charter §305 limit. Commission members discussed this issue and generally decided not to pursue the issue further. Commission members who were opposed to recommending this Charter amendment gave the following reasons:

- Unease that the Planning Board or Council would use this tool a lot.
- The potential for balkanization of the County.

- An area can try to incorporate if they want the power to tax themselves.
- The Council should have the authority to distribute funds throughout the County as it sees fit.
- The idea of a special taxing district to establish a bus rapid transit system illustrated what the pressure would be to increase the cap over time and the use of special taxing districts would become the rule.
- The potential, especially with a special taxing district to establish a bus rapid transit system, that the entire County would benefit from a project, but only a part of the County would pay for it.

Commissioners discussed the 2010 Report and generally agreed to include information in the Report indicating that the Commission recommended against the Ficker amendment in the 2008 Report, but members did not feel that 2010 was the appropriate time to place this issue on the ballot again. Commissioners also generally agreed that the 2010 Report should indicate that a number of Commission members were concerned about the supermajority requirements in the Charter.

III. Redistricting Commission

Commission members discussed a memorandum from Commissioner Wolff requesting that the Commission study changing the Charter to provide for a nonpartisan Redistricting Commission that would draw district boundary lines based on set guidelines. The memorandum will be incorporated into these minutes.

Commission members identified that the following information would be helpful in studying the issue:

- What have previous Commission Reports said about the issue?
- What happens in other counties?
- Are there other state models that are good models?
- Should the Commission hold a public forum on this issue?
- What criteria should be used in establishing boundaries?

The Commission decided to do an initial study to determine whether the Commission should take up this issue for the 2010 Report. At the December meeting, the Commission may decide to further pursue the issue. Motion made by Judith Vandegriff and seconded by Wilbur Friedman.

In favor: Michael Cogan, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Judith Vandegriff, Charles Wolff (7)

Oppose: Anne Marie Vassallo (1)

Abstain: Nancy Soreng, Moshe Starkman (2)

The following Commission members agreed to form a Redistricting Subcommittee to perform the initial research required to present information to the Commission at its December meeting: Michael Cogan, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Judith Vandegriff, Charles Wolff.

IV. Administrative Items

The Commission approved the October 14 minutes. Motion made by Karen Czapanskiy and seconded by Michael Cogan.

In favor: Michael Cogan, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Moshe Starkman, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff (10)

The meeting was adjourned at 9:24 a.m.

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CHARTER REVIEW COMMISSION
Wednesday, December 9, 2009
6th Floor Conference Room
Council Office Building

Commission Members Present:

Nancy Soreng, Chair
Karen Czapanskiy
Wilbur Friedman
Mollie Habermeier
Robert Shoenberg
Moshe Starkman
Judith Vandegriff

Anne Marie Vassallo
Charles Wolff

Staff:

Robert Drummer, County Council
Justina Ferber, County Council
Marie Jean-Paul, County Council
Marc Hansen, County Attorney's Office

Guests

Joseph Adler, Director, Office of Human
Resources
Leslie Rubin, Office of Legislative Oversight

Absent:

Alice Gresham Bullock, Vice-Chair
Michael Cogan

Commission Chair Nancy Soreng began the meeting at 8:10 a.m.

I. Disability Hiring Discussion

The Commission received a memorandum from Council President Phil Andrews asking the Commission to study whether to amend the County Charter to allow the establishment of a special hiring authority within the County Merit System that would permit an alternative approach for the recruitment, selection, and hiring of people with disabilities into Merit System positions. The Council requested the Commission's input before July 1, 2010.

Mr. Adler stated that the County has been looking at the issue of the hiring of persons with disabilities and creating a special hiring authority similar to the one in the Federal government (Schedule A). The special hiring authority would allow managers to hire qualified disabled persons to open positions without going through the competitive hiring process. They would remain in the position for two years and if they are doing a good job would then achieve merit system status.

The question has been whether the County government could develop a special hiring authority to hire persons with disabilities into County government merit system jobs. The County Attorney has concluded that establishing an alternative hiring process for merit system positions for persons with disabilities would require an amendment to the County Charter.

In its review of the Office of Legislative Oversight report on Hiring of Persons with Disabilities, the Council's Management and Fiscal Policy (MFP) generally supported the idea of a special hiring authority, but recommended the Council refer the issue to the Charter Review Commission for study and comment. Copies of the report were distributed to Commissioners. The Council set a July 1 deadline for Commission comment to allow time to place a Charter question on the 2010 ballot.

The Office of Human Resources has been working with the Commission on People with Disabilities which cites a 50% unemployment rate for the disabled. For every vacant position, the County receives at least 20-30 qualified applicants and someone with a disability has difficulty in getting selected. The County began a new program in 2008 for hiring persons with disabilities as part-time interns and people are cycled in and out of the program.

Commissioners discussed the issues and asked questions. Ms. Rubin explained that the definition of disability would be defined in law or regulation as part of the special hiring authority legislation if allowed by the Charter. She noted that Federal Schedule A employees have very specific criteria they must meet. Mr. Adler stated that the County could require certification by the Maryland State Department of Disability Services for classification as disabled.

Commissioner Czapanskiy was not yet convinced that the County should add a new program if an anti-discrimination program will do an adequate job. From the discussion and materials provided, she concluded that County managers may be inappropriately resistant to disabled applicants and that is illegal. She would like to see evidence that a new program is needed and that anti-discrimination measures are not adequate. Ms. Rubin stated that OLO is not advocating for any change. However, they concluded that the ADA is a strong law but has not had a significant effect on the County's disability hiring. Commission Chair Soreng noted that the County's intern program for the disabled is fairly new.

Commissioners requested the following information:

1. How does the County currently define disability? Is it the ADA definition?
2. What do Councilmembers have in mind regarding the types of disabilities to be considered by the special hiring authority and how would they define disability for the new program? Is there any draft legislation?
3. Under a special preference, how would the County keep from discriminating against others who are qualified?
4. Have there been challenges to the federal and state programs for special hiring?
5. What is the unemployment rate for people who are likely to be served by the program?

6. How does the County know that disabled people are not applying for County jobs and that they are not successful when applying for County jobs? Has the County kept data on disability discrimination?
7. Has there been an evaluation of the new intern program for the disabled?
8. Have there been any legal challenges to the federal program? Has it resulted in increased hiring of persons with disabilities?
9. What is the view of the Human Rights Commission about the proposed Charter amendment?

II. Redistricting

The Commission discussed the various draft reports from the Redistricting Subcommittee. The following Commissioners briefed the Commission on their reports: Commissioners Wolff, Habermeier, Czapanskiy, Vandegriff, and Friedman.

Mr. Hansen commented on judicial participation in the redistricting process. He noted that there might be a conflict with the Maryland Constitution. He stated that the County would not be able to require retired judges to serve and service would be on a voluntary basis. He stated that many retired judges return to the bench part-time and would be considered sitting judges and would not be able to participate on a redistricting commission because of conflicts with the judicial canon of ethics. He noted that many retired judges leave the area or become active in the community and may not be as impartial as when sitting on the bench.

Chair Soreng suggested that the Commission meet twice in January. On January 13 the Commission will discuss redistricting and decide whether to move forward with the issue. On January 29 the Commission will discuss disability hiring. The Commission asked that the County's Equal Employment Opportunity and Diversity Manager be invited to the January 29 meeting to respond to questions regarding discrimination. There was also interest in having the chair of the Commission on People with Disabilities speak about the federal program. In addition, if the Human Rights Commission has had any referrals to them regarding discrimination of people with disabilities, Charter Review Commissioners would like to know about these.

The meeting was adjourned at 9:30 a.m.

Calendar for May 1, 2010 Commission Report

January 13	January 29	February 10	March 10	April 14	May 1
Redistricting Discussion	Disability Hiring Discussion	Assign drafting responsibilities for final report	Review of Draft Report	Vote on Final Report Report to Printer 4/21	Report Due to County Council

CHARTER REVIEW COMMISSION
Wednesday, January 13, 2010
6th Floor Conference Room
Council Office Building

Commission Members Present:

Nancy Soreng, Chair
Michael Cogan
Karen Czapanskiy
Wilbur Friedman
Mollie Habermeier
Robert Shoenberg
Moshe Starkman
Judith Vandegriff
Anne Marie Vassallo
Charles Wolff

Staff:

Justina Ferber, County Council
Marie Jean-Paul, County Council
Marc Hansen, County Attorney's Office
Amanda Mihill, County Council

Guests

Erin Cunningham, Gazette Newspaper

Commission Chair Nancy Soreng began the meeting at 8:05 a.m.

I. Administrative Items

Ms Soreng announced that Commission Vice-Chair Alice Gresham Bullock resigned from the Commission.

The Commission approved the November 18 minutes. Motion made by Judith Vandegriff and seconded by Anne Marie Vassallo.

In favor: Michael Cogan, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff (9)

The Commission discussed the December 9 minutes and made the following changes:

- Replaced the first two sentence of the 4th paragraph on page 2 to more accurately reflect Ms. Czapanskiy's concerns.
- Added the question "what is the view of the Human Rights Commission about the proposed Charter amendment?" to the list of questions on pages 2-3.

In favor: Michael Cogan, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff (9)

II. Redistricting Commission

Mr. Wolff, Chair of the Redistricting Subcommittee thanked the subcommittee members for their efforts. Mr. Wolff presented the subcommittee's research to the Commission as described in a January 11, 2010 memorandum. Mr. Wolff also presented a handout suggesting potential Charter changes related to the Redistricting Commission. These memoranda will be made part of the meeting minutes.

Commission members discussed the pros and cons of making changes to the Redistricting Commission. Commission members made the following observations and comments:

- Some members felt that changing the structure currently in place was a 100% solution to a 1% problem and did not feel that it was an appropriate time to recommend changing the structure.
- The current structure requires Redistricting Commission members to be from a political party that polled at least 15% of the votes cast for Council candidates. Some members felt that this structure excludes 21.5% of the voting population from the redistricting process. (This represents the number of voters registered to third parties or unaffiliated.)
- Some members were concerned that an effort to remove all politics from the redistricting process would leave only voters who are unaffiliated with any party.
- Some members were concerned about reports issued by the Brookings Institute and the Cato Institute that showed that in elections, incumbents have an advantage and almost always win. Other members noted that the reports issued by those Institutes discussed only congressional elections and not local elections; the recommendation to have non-partisanship in redistricting was not based on empirical research, but on belief; and that taking politics out of the process doesn't improve competitiveness, but the public perception of fairness.

Commission members discussed the suggestions outlined in the memorandum on potential Charter changes and whether there was sufficient interest amount Commission members to pursue the issue further. Mr. Wolff was particularly interested in pursuing requiring councilmanic districts to be drawn such that there are "no lines to help or hurt an incumbent, political party, or group".

Mr. Starkman indicated his interest in discussing standards for drawing district lines and was particularly interested in prohibiting district lines to be drawn such that precincts and small municipalities are split. Ms. Czapanskiy noted her belief that the current councilmanic districts do not split municipalities. Mr. Starkman further commented that he may be interested in looking at qualifications similar to those required for Ethics Commission members, but also noted that he did not view these changes as compelling. Mr. Wolff argued that even if there is not a compelling need to change the Redistricting Commission, there may still be better ways to do it.

The Commission took a straw vote on whether there was a need for a Charter amendment to change the way redistricting is done in Montgomery County.

Support an amendment: Charles Wolff (1)

Oppose an amendment: Michael Cogan, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Anne Marie Vassallo (7)

The Commission voted not to pursue the issue. Chair Soreng thanked the subcommittee members for their research and work on the issue.

The meeting was adjourned at 9:23 a.m.

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CHARTER REVIEW COMMISSION
Friday, January 29, 2010
6th Floor Conference Room
Council Office Building

Commission Members Present:

Nancy Soreng, Chair
Michael Cogan
Karen Czapanskiy
Wilbur Friedman
Mollie Habermeier
Robert Shoenberg
Judith Vandegriff
Anne Marie Vassallo
Charles Wolff

Absent:

Moshe Starkman

Staff:

Justina Ferber, County Council
Marie Jean-Paul, County Council
Marc Hansen, County Attorney's Office
Amanda Mihill, County Council

Guests

Joan Karasik, Transition Work Group
Leslie Rubin, Office of Legislative Oversight
Angela Washington, EEO Officer, Office of
Human Resources
Ricky Wright, Disability Program Manager,
Office of Human Resources

Commission Chair Nancy Soreng began the meeting at 8:10 a.m.

I. Hiring People with Disabilities

The Commission met with Angela Washington, the County's Equal Employment Opportunity Officer and Ricky Wright, the County's Disability Program Manager from the Office of Human Resources. Ms. Washington and Mr. Wright provided an overview of the law as it relates to hiring people with disabilities. Mr. Wright noted that the Commission on People with Disabilities is encouraging the County to hire additional people with disabilities into merit positions.

Mr. Wright explained that there are 3 federal laws that are important to understand when discussing hiring people with disabilities: The 1973 Rehabilitation Act, the Americans with Disabilities Act (ADA), and the 2008 amendments to the ADA. Mr. Wright noted that the 1973 Rehabilitation Act distinguished profound disabilities from moderate and mild disabilities such as mental retardation, severe physical disabilities, and developmental disabilities. The ADA, on the other hand, does not distinguish between these disabilities and other medical conditions that may have a substantially limiting affect on a major life activity.

Mr. Wright explained the federal government's Schedule A program arose from the desire to move employees with disabilities from a sheltered workshop environment to employment in communities. Under the Schedule A program, federal agencies can hire an applicant with mental retardation or a severe physical or mental disability without going through the competitive process as long as the applicant meets minimum job qualifications.

Leslie Rubin, Office of Legislative Oversight, and Marc Hansen, Office of the County Attorney, explained the 2 different proposals that the Council is considering. First, the Council is considering legislation which would establish a hiring preference for people with disabilities as part of the competitive hiring process. Under that legislation, individuals with disabilities who rank in the highest rating category would have a hiring preference. This legislation does not require a Charter amendment to implement and is therefore not before the Charter Review Commission.

The second proposal the Council is considering is whether to establish a special hiring authority for people with disabilities similar to the federal government's Schedule A process. This proposal, as explained by the County Attorney's Office, would require a Charter amendment and is the proposal that is before the Charter Review Commission. Under this proposal, qualified individuals would not have to participate in the regular competitive hiring process. Mr. Wright stated that the County Executive and the Chief Administrative Officer support a County program similar to this Schedule A process. Mr. Wright stated that the County government has not discriminated against individuals during the hiring process. During the current hiring process, hiring managers rank applicants based on their knowledge, skills, and abilities and do not have information related to an applicant's disabled status, race, or other similar traits.

Commission members discussed the merits of a Schedule A process. Some Commission members understood that the proposed Charter amendment would be enabling law and indicated that it would be helpful to understand what the implementing legislation and regulations would say. Ms. Washington responded that the regulations are not drafted, but she envisioned that the definition of disability and the hiring process would be similar to that of the Schedule A program.

Some Commission members were concerned that preferences in general skew the workforce and were concerned about singling out one group of people over another group of people for a special hiring authority. Responding to Commissioner questions about the Schedule A program and whether that program had been abused, Ms. Rubin noted that the number of disabled employees in the federal government declined to less than 1%.

Some Commission members questioned whether the hiring preference bill the Council is considering and the proposed Charter amendment both needed to be adopted or whether the problem could be solved by addressing only one of the pending proposals. Ms. Rubin noted that the OLO report that this issue arose out of included several recommendations related to the County's practices relating to hiring people with disabilities. Ms. Washington stated that the Office of Human Resources has already implemented those recommendations.

Some Commission members questioned whether the County does special recruiting for people with disabilities. Ms. Washington responded that the County currently participates in an internship program for people with disabilities in conjunction with Community partners who serve people with disabilities. However, the County has been under a hiring freeze since the OLO report was issued and positions are currently unavailable.

The meeting was adjourned at 9:31 a.m.

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CHARTER REVIEW COMMISSION
Wednesday, March 10, 2010
6th Floor Conference Room
Council Office Building

Commission Members Present:

Nancy Soreng, Chair
Michael Cogan
Karen Czapanskiy (by phone)
Wilbur Friedman
Mollie Habermeier
Robert Shoenberg
Judith Vandegriff
Anne Marie Vassallo
Charles Wolff

Absent:

Moshe Starkman

Staff:

Bob Drummer, County Council
Justina Ferber, County Council
Marie Jean-Paul, County Council
Marc Hansen, County Attorney's Office
Amanda Mihill, County Council

Guests

Joan Karasik, Transition Work Group
Karen Leggett, Transition Work Group
Betsy Luecking, Disability Policy Specialist,
County Dept. of Health and Human Services
Mark Maxin, Chair, Commission on People
with Disabilities
Leslie Rubin, Office of Legislative Oversight

Commission Chair Nancy Soreng began the meeting at 8:05 a.m.

I. Meeting with Mark Maxin, Commission on People with Disabilities

The Commission met with Mark Maxin, Chair of the County Commission on People with Disabilities. Mr. Maxin introduced himself and noted that he is the Assistant General Counsel for Administration at the U.S. Nuclear Regulatory Commission and past Council for Labor Relations at the U.S. Department of Labor.

Mr. Maxin argued that in Montgomery County, the prevalence of hiring people with disabilities is so small that it is difficult to measure, but he noted that the problem is not just a County-wide problem. Mr. Maxin explained that in 1994, 1.24% of federal employees were people with disabilities. After 15 years, the federal workforce has grown by 10%, but the number of disabled employees has dropped to 0.88%. Mr. Maxin argued that of all of the protected groups (e.g., race, gender, national origin, age), organizations have done the worst when it comes to hiring people with disabilities and stated that the numbers will get worse without action. Mr. Maxin explained his view that the issue was not just one of hiring, but of integration. Mr. Maxin acknowledged that the hiring preference bill recently enacted by the Council was an important and necessary step, but argued that it was not sufficient by itself to address the problem.

In explaining the proposed special hiring authority, Mr. Maxin explained that it is not in anybody's interest to hire a person with disabilities who can't perform the job. Under the proposed program, people could only be hired if they were qualified and able to do the job and be certified as "job ready". Mr. Maxin argued that by using the federal government's Schedule

A program as a model, the County would be using a program that has been utilized for 20 years and was a well worn path.

Mr. Maxin explained the process by which a manager hires a person with a disability in the Schedule A program and distributed a brochure entitled "The ABCs of Schedule A For the Hiring Manager". Mr. Maxin noted that the use of the Schedule A program is at the discretion of the manager, who does not have to use Schedule A and does not have to hire any specific person that is identified as qualified to fill the position. If the person hired does not work out, the manager can remove the employee with little due process because the employee is on a 2 year probation period, though Mr. Maxin noted that the employee could file an EEOC complaint. Mr. Maxin noted that one benefit of the Schedule A program for managers is that it can be used to fast track hiring because the manager does not have to compete Schedule A positions.

Commissioners discussed with Mr. Maxin the reasons that people with disabilities are underrepresented in the workforce. Commissioners asked whether the reason people with disabilities are underrepresented is because they are not applying or they are not being selected. Mr. Maxin responded that there has not been a study of the Montgomery County workforce and Ms. Luecking noted that it was probably for both reasons. They explained that disabled people can rank "qualified" for a job, but find it difficult to reach the "highly qualified" because they may not have the years of experience because the difficulty they have with being hired in the first place.

Responding to Commissioner concerns that the proposed program could be subject to abuse, Mr. Maxin noted that the proposal would require an individual seeking to be hired under a County Schedule A process would be certified by the Maryland Department of Rehabilitation Services as being disabled.

II. Administrative Items

The Commission discussed the January 15 minutes and amended them by correcting the date and staff attendance. The Commission approved the minutes. Motion made by Judith Vandegriff and seconded by Wilbur Friedman.

In favor: Michael Cogan, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff (9)

The Commission discussed the January 29 minutes and amended them by correcting the date and staff attendance. The Commission approved the minutes. Motion made by Wilbur Friedman and seconded by Judith Vandegriff.

In favor: Michael Cogan, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff (9)

Mr. Cogan stated that he has taken a temporary assignment with a Senate committee and is working on veteran's disability compensation issues. Mr. Hansen confirmed that there are no ethical/conflict of interest issues.

III. Action on recommendations for Charter Amendments/Assignment of Drafting Responsibilities

Inspector General

The Commission reaffirmed its earlier vote not to recommend a Charter change relating to the Office of the Inspector General. Motion made by Wilbur Friedman and seconded by Mollie Habermeier.

In favor: Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff (7)

Abstain: Michael Cogan, Karen Czapanskiy (2)

Special Taxing Districts

The Commission recommended that no further exclusions should be made for special taxing districts from the Charter limit in §305. Motion made by Anne Marie Vassallo and seconded by Charles Wolff.

In favor: Michael Cogan, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff (7)

Oppose: Robert Shoenberg, Nancy Soreng (2)

Unanimous Vote Requirement to Increase §305 Property Tax Revenue Limit

The Commission generally agreed to include a statement in the 2010 Report reiterating the Commission's position about the passage of a Charter amendment that increased from 7 to 9 the number of Councilmember votes needed to exceed the §305 property tax revenue limit and reference the Commission's 2008 Report.

Mr. Cogan requested the record reflect his view that the amendment is anti-democratic and bad government, and should be repealed at the earliest opportunity.

Supermajority Concerns

The Commission generally agreed to include a statement in the 2010 Report that a number of Commission members were concerned about the supermajority requirements in the Charter.

Charter §310

The Commission reaffirmed its earlier vote not to pursue the issue of whether the Charter should be amended to allow the County to set aside funding above the 5% limit in §310 to be used when revenue collections do not meet revenue projections. Motion made by Michael Cogan and seconded by Wilbur Friedman (©16).

In favor: Michael Cogan, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Judith Vandegriff, Anne Marie Vassallo (7)

Oppose: Charles Wolff (1)

Abstain: Karen Czapanskiy (1)

Redistricting Commission

The Commission reaffirmed its earlier vote not to pursue the issue of whether there was a need for a Charter amendment to change the way redistricting is done in Montgomery County. Motion made by Wilbur Friedman and seconded by Anne Marie Vassallo.

In favor: Michael Cogan Wilbur Friedman, Mollie Habermeier, Robert Shoenberg,
Nancy Soreng, Anne Marie Vassallo (6)
Oppose: Charles Wolff, Judith Vandegriff (2)
Abstain: Karen Czapanskiy (1)

The following members will draft sections of the 2010 Report:

- Judith Vandegriff (Inspector General)
- Anne Marie Vassallo (Special taxing districts)
- Robert Schoenberg (§305 Property Tax Revenue Limit and Supermajority Concerns)
- Wilbur Friedman (§310)
- Nancy Soreng (Redistricting Committee)

The Commission scheduled a tentative meeting date of April 7 from 5:00 p.m. to 7:30 p.m. to discuss the draft report. The meeting will be cancelled if no substantive issues are presented in the draft report. Council staff requested that the draft report sections be e-mail to staff no later than March 26.

The meeting was adjourned at 9:40 a.m.

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